

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1286

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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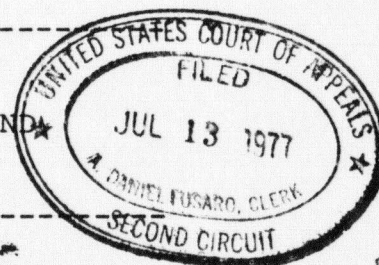
In the Matter of the Grand Jury
Subpoena Served Upon

PEDRO ARCHULETA

-----X

AN APPEAL FROM AN ORDER OF
THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

-----X
JOINT APPENDIX FOR APPELLANT AND
THE GOVERNMENT



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DOCKET ENTRIES

DATE	PROCEEDINGS
3-23-77	USA -v- JOHN DOE---Filed writ of H/C for Betty Doe and writ partially executed.
3-24-77	USA -v- JOHN DOE..Filed affdvt for writ of H/C ad test for William Wilson writ issued ret 3-30-77.
3-25-77	USA -v- JOHN DOE...Filed writ of H/C for Marion Douglas, et al, writ executed ret, 3-28-77
3-25-77	IN RE: ROBERT J. CASHMAN FROM GJ... Filed order that Robert J. Cashman be & he hereby is excused effective immediately from GJ.
3-25-77	IN RE: WILLIAM BAKER ---Filed Govts memo of law in support of its application for an order requiring the witness to surrender a certain US passport as directed by the foreman of the GJ.
3-25-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C for Ivan Perez writ issued, writ ret 3-28-77.
3-25-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Edgar Correa writ issued, ret 3-28-77.
3-25-77	IN RE: TESTIMONY BEFORE AND DOCUMENTS SUBPOENAED BY THE 1976 ADDITIONAL GRAND JURY,---Filed notice of appeal of Robert Beck & Jacob Freedman from the order of Judge Wyatt dated 3-11-77 & entered 3-21-77, mailed copy to US attny.
3-25-77	IN RE: GAETANO CIRILLO, WITNESS BEFORE GRAND JURY,---Filed affdvt of Michael D. Abzug.
3-25-77	IN RE: GAETANO CIRILLO, WITNESS BEFORE GRAND JURY,---Filed Govts, memo of law.
3-25-77	IN RE: GAETANO CIRILLO, WITNESS BEFORE GRAND JURY,---Filed order that Gaetano Cirillo be committed to custody of the Attorney Gen. of the US & returned to MCC until willing to testify, confinement not to exceed 18 mos. Bryon, J.
3-25-77	IN RE: GAETANO CIRILLO, WITNESS BEFORE GRAND JURY, Filed memo endorsed on order dated 3-25-77 that govt denies knowledge of any other electronic surveillance & that there is no merit of the contentions made by the witness with respect to contempt order. Bryon, J.
3-25-77	IN RE: DAVID HARDING WITNESS AT GJ---Filed large brown envelope sealed & delivered to clerk of court not to be opened until ordered by court.
3-25-77	IN RE: JOHN DOE---Filed one brown envelope to be sealed or unsealed at the direction of the undersigned or another Federal Judge. Bryon, J.
3-24-77	USA et al -v- Manufacturers & TRADERS BANK et al, ---Filed true copy of USCA MANDATE affirming the judgment of district court with bill of cost taxed in favor of petitioner appellee in the sum of \$226.58 & docketed as judgment # 77,431.
3-23-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Charles Dani writ issues ret, 3/30/77.
3-23-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Ed. Wilson writ issued ret, 3-30-77.
3-25-77	IN RE: JOSEPH COTARELO, CONTEMPT PROCEEDINGS---Filed opinion #45729 that application for order confining Joseph Cotarelo for refusing to testify before grand jury is granted. Metzner, J.
3-21-77	IN RE: JOSEPH COTARELO, CONTEMPT PROCEEDINGS---Filed affdvt & show cause order to confine Jos. Cotarelo to MCC.
3-21-77	IN RE: JOSEPH COTARELO, WITNESS BEFORE GJ---Filed affdvt, order, & application for immunity.
	Filed memo endorsed on order dated 3-21-77 this order is amended to include the 11-9-76 additional GJ. Metzner, J.
3-28-77	IN RE: JOSEPH COTARELO, CONTEMPT PROCEEDINGS, ---Filed order that deft. be committed to MCC, Metzner J.

DATE	PROCEEDINGS
3-31-77	USA -v- JOHN DOE ET AL---Filed affdvt for writ of H/C for Francisco - Cotto- Colon Writ issued ret. 4-6-77.
4-1-77	USA -v- MARIO PERNA ---Filed affdvt & order that Mario Perna be detained in the Bergen County Annex, NJ. Metzner, J.
4-1-77	IN RE: NICHOLAS CIRILLO GJ Witness---Filed affdvt & show cause order to hold Nicholas Cirillo in contempt of GJ etc. ret. 4-5-77 Metzner, J.
4-1-77	IN RE: NICHOLAS CIRILLO GJ WITNESS---Filed memorandum in opposition to contempt proceedings. ---Filed brown envelope per Metzner, J. dated 3-28-77
4-4-77	IN RE: GRAND JURY SUBPOENA ON PEDRO ARCHULETA, ---Filed affdvt & notice of motion in re to Pedro Archuleta concerning grand jury selection, & production of books & records. Ret. 4-4-77
4-4-77	IN RE: GRAND JURY SUBPOENA ON PEDRO ARCHULETA, ---Filed affdvt & notice of motion to quash.
4-4-77	IN RE: GRAND JURY SUBPOENA ON PEDRO ARCHULETA---Filed memo of law in support of motion to quash.
4-4-77	IN RE: APPLICATION OF MARY K. GOLDSTEIN---Filed affirmation & show cause order on behalf of Mary K. Goldstein for an order pursuant to rule 6(e) F.R. Cr. P. to permit petitioner to inspect & copy books & records of BLT incorp. ret. 4-6-77 at 9:30 am Lasker, J.
4-4-77	IN RE: APPLICATION OF MARY K. GOLDSTEIN ---Filed memo of law in support.
4-4-77	IN RE: VINCENT SAUSTO CONTEMPT PROCEEDINGS, ---Filed order that Vincent Sausto be committed to the custody of the attny gen. at MCC as of 4-4-77 until willing to testify before GJ. Metzner, J.
4-4-77	USA -v- JOHN DOE---Filed writ of H/C ad test for Frank G. Alvarez writ satisfied 3-31-77.
4-4-77	IN RE: GRAND JURY SUBPOENA SERVED ON ROBERT HOFFMAN ESQ. ---Filed memo that all documents submitted are privileged & the govts application to enforce the subpoena is denied. Duffy, J. So ordered.
4-5-77	IN RE: NICHOLAS CIRILLO GJ WITNESS. ---Filed affdvt of Michael D. Abzug. Filed -Govts memo of law in support.
4-5-77	IN RE: TO APPLICATION OF MARY K. GOLDSTEIN etc. ---Filed affdvt of Martin I. Kaminsky in opposition to petitioners motion for inspection of records.
4-5-77	PAUL A. FINO -v- ROBERT B. FISKE, Jr. ---Filed memo endorsed on motion dated 1-6-77, the court agrees that rule 6(e) governs & applying same to facts presented herein finds no basis thereunder to grant the relief petitioned for. The petition is denied so ordered. Pierce, J.
4-5-77	PAUL A. FINO -v- ROBERT B. FISKE, Jr. ---Filed govts memo in opposition . . .
4-5-77	IN RE: MICHAEL ZAPATERO Filed Trans. 5-21-76 Knaap, J.
4-5-77	IN RE: CJ INVESTIGATION Filed Trans. 4-16-76 Pollack, J.
4-6-77	IN RE: CUILLEMO A. MARTINEZ Filed Trans. 7-3-74
4-6-77	IN RE: HOWARD DILLER Filed Trans. 8-31-76
4-6-77	IN RE: MOTION TO QUASH SUBPOENA Filed Trans. 9-3-76
4-6-77	IN RE: GJS OF MAURICE LEON Filed Trans. 9-10-76
4-6-77	USA -v- JOHN ANTHONY CERASANI Filed Trans. 10-1-76
4-6-77	IN RE: DENNIS MULLIGAN Filed Trans. 10-6-76
4-6-77	IN RE: RONALD NELSON Filed Trans. 12-8-75
4-6-77	IN RE: GJS DT FOR RECORDS OF ARANDIA-SACOLICK M.D. et. ano, ---Filed affdvt & notice of motion authorizing Dr. Arandia to inspect & photocopy certain medical records.
4-5-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C ad test for Betty- McFarland writ issued, ret. 4-11-77.
4-5-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for William Wilson writ satisfied ret. 4-1-77.

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SUBPOENA AND RELEASE AD TEST

M-11-189

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF

DEFENDANT

DOCKET NO. _____

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DATE	NR.	PROCEEDINGS
4-6-77		IN RE: APPLICATION OF MARY K. GOLDSTEIN, ---Filed memo endorsed motion denied without prejudice renewal upon issuance of an order of the Supreme Court of NJ holding in substance that petitioner is entitled to access to or possession of the papers which are the subject of this motion. Sp. order. Lasker, J.
4-6-77		IN RE: LOUIS MORALES WITNESS IN GJ, ---Filed affdvt & show cause order of Michael D. Azum, that Louis Morales, before the USDC Rm 1903 On 4-6-77 at 2:45 PM. Lasker, J. should not testify. 4-21-77 J.
4-6-77		USA et al-v-JOHN COHEN---Filed memo endorsed Motion granted on default submit order. Lasker, J.
4-6-77		USA et al-v- THEODORE SLUK---Filed affdvt of resp. Theodore Sluk requesting that this proceedings be dismissed.
4-7-77		IN RE: 1976 additional GJ---The record on appeal in the above entitled proceeding has been certified & transmitted to the USCA for the second circuit on 4-7-77. Wyatt, J.
4-7-77		USA-v-JOHN DOE (STANLEY NEEDLEMAN)---Filed record of transcript 8-19-76
4-7-77		LYNDON H. LAROCHE, Jr. et al-v-CLARENCE KELLEY et al.---Filed record of transcript 9-28-76
4-7-77		USA-v-JOHN DOE a/k/a Harold Herman---Filed record of transcript 11-4-76
4-7-77		COALENERGY KENTUCKY, INC et al-v-H.M. CALLIHAN, Jr. et al---Filed record of transcript 1-10-77
4-7-77		IN RE: MARIA CUETO GRAND JURY WITNESS---Filed record of transcript 1-10-77
4-7-77		IN RE: ANDREW CASTALDI GRAND JURY WITNESS---Filed record of transcript 1-19-77
4-7-77		IN RE: GJS SERVED ON STREETWORKERS ETC.---Filed record of transcript 2-9-77
4-7-77		IN RE: GJS SERVED ON STREETWORKERS ETC.---Filed record of transcript 2-10-77
4-7-77		IN RE: GAETANO CIRILLO WITNESS BEFORE SPECIAL GJ.---Filed notice of appeal for the second circuit from the final order of judgment of the USDC of N.Y. entered & granted by Bryan J. on or about 3-30-77. copy sent USA
4-7-77		IN RE: GRAND JURY SUBPOENA SERVED ON ROBERT BECK, ---Filed affdvt & show cause order to quash a grand jury subpoena duces tecum. Lasker, J. Filed memo of law of Robert Beck in support.
4-8-77		IN RE: LOUIS MORALES WITNESS BEFORE GRAND JURY---Filed brief of Louis Morales.
4-8-77		IN RE: GRAND JURY SUBPOENA SERVED ON IRIS RUCKER---Filed transcripts of proceedings dated 2-7-77.
4-8-77		USA -v- SHIRLEY PICKERING ----Filed transcripts of proceedings dated 10-8-76.

SUBPOENAS AND HABEAS CORPUS: AD TEST

M 11-188

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. _____
			PAGE ____ OF ____ PAGES
DATE	NR.	PROCEEDINGS	
4-8-77		USA -v- JOHN DOE---Filed affdvt for writ of habeas corpus ad test for Alvaro Correa, writ issued ret. 4-18-77.	
4-8-77		IN RE: GJ TESTIMONY OF DIEGO VILLAMIZAR ---Filed affdvt & order that transcript be transported in sealed condition and be unsealed in the presence of SCJ Irving Lang. Lasker J.	
4-8-77		IN RE: ANGELO PRISCO 10-16-75 SPECIAL GJ---Filed endorsement denying application of Angelo Prisco for release from MCC. MacMahon, J.	
4-11-77		USA -v- JOHN DOE ---Filed govts affdvt & show cause order to hold John Doe in contempt. xxxxxxx ret. 4-11-77 Lasker, J.	
4-11-77		Filed one brown envelope ordered sealed and placed in vault in Rm. 66. Lasker, J.	
4-8-77		IN RE: PETER PELUSO GJ WITNESS---FILED GOVTS AFFDVT & SHOW CAUSE order to compel Peter Paluzo to testify before the grand jury, ret 4-19-77 Lasker, J.	
4-8-77		IN RE: PETER PELUSO GJ WITNESS---Filed govts memo of law in support.	
4-12-77		IN RE: GJ subpoena served on Abraham Gordon ---Filed ^{Local 719 IBT Pres} reply affdvt of ^(Gustave H. Newman) in response to affdvt dated 4-5-77 by Michael Moroney.	
4-12-77		IN RE: GJ subpoena served on Abraham Gordon president of local 805 ---Filed reply affdvt of Gustave H. Newman in response to affdvt dated 4-5-77 by Michael Moroney.	
4-12-77		USA -v- John Doe--- Filed affdvt for writ of H/C for Ernest Staten, writ issued ret 4-18-77.	
4-12-77		IN RE: GAETANO CIRILLO WITNESS IN SPECIAL GJ---Filed order that clerk of the court transmit all sealed papers in this matter to USCA in their sealed state & upon return from court of appeals clerk return documents to carriers vault. Brennan.	
4-12-77		IN RE: TESTIMONY & SUBPOENA DOCUMENTS OF 1976 ADDITIONAL GJ ON (MANALIN REALTY) ---The record on appeal in the above proceeding has been certified & transmitted to the USCA for the second circuit on this 12th day of April 1977.	
4-13-77		USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Anthony-Torres, writ is hereby allowed. Retzner, J.	
4-13-77		Filed one brown envelope of certain records of Arandia-Saccolick, M.D. P.C. sealed by request of parties.	
4-13-77		USA -v- ALVIN BRAGG ---Filed memo endorsed on show cause order dated 4-11-77, motion disposed of per discussion on the record this date, -So ordered, Lasker, J.	
4-13-77		IN RE: GJ SUBPOENA SERVED UPON PEDRO ARCHULETA, ---Filed affdvt of Joan Friedland for purpose of quashing two GJ subpoenas.	

DATE	PROCEEDINGS
4-13-77	IN RE: GRAND JURY SUBPOENA DUCES TECUM SERVED ON ABRAHAM GORDON PRES. OF LOCALS 719 & 805 INTERN'L BROTHERHOOD OF TEAMSTERS, ---Filed affdvt of Abraham Gordon.
4-13-77	IN RE: GJSBT SERVED ON ABRAHAM GORDON PRES. OF LOCALS 719 & 805 INTERN'L BROTHERHOOD OF TEAMSTERS, ---Filed supplemental affdvt of Gustave H. Newton to quash GJS.
4-13-77	IN RE: GJSBT SERVED ON ABRAHAM GORDON PRES. OF LOCALS 719 & 805 INTERN'L BROTHERHOOD OF TEAMSTERS, ---Filed affdvt of service by mail of Gwynn Agiles.
4-13-77	IN RE: GJSBT SERVED ON ABRAHAM GORDON PRES. OF LOCALS 719 & 805 INTERN'L BROTHERHOOD OF TEAMSTERS, ---Filed memo in support.
4-13-77	IN RE: GJSBT SERVED ON ABRAHAM GORDON PRES. OF LOCALS 719 & 805 INTERN'L BROTHERHOOD OF TEAMSTERS, ---Filed affdvt of Michael Moroney in opposition to quash GJSBT.
4-13-77	IN RE: GJSBT SERVED ON ABRAHAM GORDON PRES. OF LOCALS 719 & 805 INTERN'L BROTHERHOOD OF TEAMSTERS, ---Filed govts memo of law in opposition to quash GJSBT.
4-14-77	IN RE: GJS SERVED ON ROBERT BECK OF 3-23-77---Filed memo endorsed motion withdrawn per telephone advice of AUSA George Wilson this date. So ordered. Lasker, J.
4-14-77	Filed one brown envelope of certain matters pertaining to reg. GJ pursuant to Fed. R. Crim. P. 6(E). ordered sealed. Lasker, J.
4-15-77	IN RE: GJS SERVED ON PEDRO ARCHULETA---Filed govts affdvt of Thomas E. Engel in opposition to motion filed by deft to quash GJS.
4-15-77	IN RE: GJS SERVED ON PEDRO ARCHULETA---Filed govts ex parte affdvt of Thomas E. Engel in opposition to quash GJS.
4-15-77	IN RE: GJS SERVED ON PEDRO ARCHULETA---Filed govts memo of law in support.
4-15-77	IN RE: SPECIAL GJ EMPANELLED 6-26-73---Filed one brown envelope ordered sealed until further order of the court. Lasker, J.
4-14-77	IN RE: ABRAHAM WOLF GJ WITNESS---Filed judgment & order remanding Abraham Wolf to commence service of sentence imposed herein: It so ordered. POLLACK, J.
4-14-77	USA -v- JOHN DOE ---Filed writ of H/C ad test for Anna Jean George writ is hereby allowed. Subt. to ctc on 1-17-77. MacMahon, J.
4-14-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C ad test & writ of H/C ad test for Martin Hodas. writ is allowed. MacMahon, J.
4-18-77	IN RE: GAETANO CIRILLO---The above entitled proceedings has been certified & transmitted to the USCA for the second circuit 4-18-77. Bryan, J.
4-18-77	IN RE: NICHOLAS CIRILLO WITNESS BEFORE GJ---Filed memo endorsed on order dated 4-5-77 ---For the foregoing reasons, the govts application is granted. Edolstein, J.
4-19-77	USA -v- JOHN DOE ---Filed writ of H/C ad test for Donald Head, writ satisfied 4-14-77.
4-19-77	USA -v- JOHN DOE---Filed writ of H/C ad test for William Richutti, writ satisfied 4-7-77.
4-19-77	USA -v- JOHN DOE---Filed writ of H/C ad test for Felix Ortiz, writ satisfied 4-14-77.
4-19-77	USA -v- JOHN DOE---Filed writ of H/C ad test for Betty McFarland, writ satisfied. 4-14-77.
4-19-77	IN RE: GRAND JURY PEDRO ARCHULETA---Filed additional motion to quash and/or for a stay and/or for hearing on governmental misconduct, scheduled for 4-22-77.

SUBPOENAS AND HABEAS CORPUS AD TEST

M 11-188

DATE	PROCEEDINGS
4-19-77	IN RE: GRAND JURY SUBPOENA SERVED ON PEDRO ARCHULETA---Filed supple- mental memo of law in support of motion to quash & in reply to govts answering papers, scheduled for 4-22-77.
4-19-77	IN RE: GRAND JURY WITNESS PEDRO ARCHULETA ---Filed affdvt of Sara B. Chis- Chrisman, scheduled for 4-22-77
4-19-77	IN RE: GRAND JURY WITNESS PEDRO ARCHULETA ---Filed affdvt of Joan Friedland. scheduled for 4-22-77
4-19-77	IN RE: PETER J. PELUSO WITNESS FOR GJ,---Filed affdvt of Peter Peluso in opposition to the US attorney's application to compel deponent to testify before GJ.
4-19-77	IN RE: PETER J. PELUSO WITNESS FOR GJ,---Filed affdvt of Anthony Lombardi in court.
4-19-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C Ad. satisfactorily Valenzuela, to produce him in this court on 5-2-77.
4-20-77	IN RE: GRAND JURY SUBPOENA OF PEDRO ARCHULETA---Filed notice of motion to intervene as clergy of the Iglesia Episcopal Puertorriquena (Epi- scopal Church of Puerto Rico) attached memo of law in support of motion to intervene. Lasker, J.
4-22-77	IN RE: GRAND JURY SUBPOENA OF PEDRO ARCHULETA,---Filed notice of motion to intervene organizations and individuals. Attached is memo in support of motion to intervene. Lasker, J.
4-19-77	IN RE: TO APPLICATION OF LOCAL 144, HOTEL, HOSPITAL, NURSING HOME etc. -v- USA, ---Filed true copy of notice of appeal # 77-8168, said notice of appea not having been properly docketed, is hereby dismissed.
4-19-77	IN RE: PETER PELUSO WITNESS BEFORE GJ---Filed brown envelope to be sealed or unsealed only at the direction of the undersigned or another Federal Judge, Stewart J.
4-21-77	IN RE: PETITION FOR DISCLOSURE OF CERTAIN PROCEEDINGS BEFORE THE MAY 1976 additional GJ relating to Anthony Rapone,---Contents of this envelope are ordered sealed until further order of the court. Stewart, J.
4-21-77	IN RE: TO PROCEEDINGS RELATING TO ALPONE LABORATORIES,---Filed one brown envelope contents ordered sealed until further order of the court. Stewart, J.
4-21-77	IN RE: GERALD S. CORSOVER---Filed one brown envelope contents ordered sealed until further order of the court. Stewart, J.
4-22-77	IN RE: PETER J. PELUSO WITNESS FOR GJ,---Filed affdvt & notice of motion of Peter J. Peluso for an order staying the appearance of said deft. before the GJ to May 16, 1977.
4-25-77	IN RE: GJ & THE MAY 1976 ADDITIONAL GRAND JURY---Filed one brown envelope ordered sealed until further order of the court. MacMahon.
4-25-77	IN RE: GRAND JURY WITNESS PEDRO ARCHULETA---Filed affdvt of Joan Friedland to provide additional bases. Lasker, J.
4-25-77	IN RE: LOUIS MORALES GJ WITNESS,---Filed memorandum opinion #45825 the witness is directed to testify before GJ or be held in contempt until such time as he testifies. Lasker, J.
4-25-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C al test for Charles Anthony Guida, writ issued ret. 5-2-77.
4-26-77	IN RE: PEDRO ARCHULETA ---Filed supplemental affdvt of Thomas E. Engel.

DATE	PROCEEDINGS
4-26-77	IN RE: GJSET ADDRESSED TO INGRAM CORP. et al---Filed affdvt of Irving P. Seidman et al & notice of motion to quash subpoenas & for other relief, ret. 5-10-77 rm. 506 at 9:30 A.M. before the Honorable W. Knapp. Filed memo of law in support of motion to quash.
4-26-77	IN RE: THOMAS MANCUSO, GJ WITNESS---Filed affdvt & show cause order of Murray Richman, Esq. Why an order should not be made herein ordering the release of Thomas Mancuso from the custody of the Attorney Gen. of the US at MCC, ret. 5-2-77 at 9:30 A.M. Rm. 506. McMahon, J.
4-26-77	IN RE: VINCENT SAUSTO, GJ WITNESS---Filed affdvt & show cause order of Murray Richman, Esq. Why an order should not be made herein ordering the release of Vincent Sausto from the custody of the Attorney Gen. of the US at MCC, ret. 5-2-77 at 9:30 A.M. Rm. 506. McMahon, J.
4-26-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C ad test for William Rodman, writ issued ret. 5-2-77.
4-27-77	IN RE: 1976 Additional GJ (Manalin Realty) Filed by Wyatt, J.
4-27-77	USA -v- JOHN DOE---Filed affdvt for writ of H/c for Christian Nunez-Tineo a/k/a Severino Tineo, writ issued, ret. 5/13/77.
4-28-77	IN RE: 1976 ADDITIONAL GJ (MANALIN REALTY)---Filed record on appeal in the above entitled proceeding has been certified & transmitted to the USCA for the second circuit on this 4-28-77.
4-28-77	IN RE: MICHAEL DeSALVO CONTEMPT PROCEEDINGS---Filed gov'ts order that Michael DeSalvo be committed to the custody of the Attorney General of the US at MCC N.Y. until such a time that he is willing to testify before the GJ (10-10-77, subject to two additional six mos. extension) whichever first occurs, but not to exceed eighteen mos. McMahon, J.
4-29-77	IN RE: GJ SUBPOENA FOR STEVEN RINGEL FOR THE 9-14-76 SPECIAL GJ.---Filed affdvt & notice of motion of Ira S. Cooper for an order to quash subpoena served on Steven Ringel, ret. 5-10-77.
3-11-77	IN RE: MARIA GUZTO AND DAISY GUZTO IN CONTEMPT PROCEEDINGS---Filed transcript record of proceedings dtd: 2/4/77, 2/4/77 & 2/28/77
4-12-77	IN RE: MANALIN REALTY CO.: Filed transcript record of proceedings dtd: 3/21/77
5-2-77	IN RE: GRAND JURY SUBPOENA SERVED ON PEDRO ARCHULETA, Filed supplemental affdvt of Thomas E. Engel.
5-2-77	IN RE: GJSET SERVED ON ABRAHAM GORDON, PRESS LOCALS 719 & 805 INTER'L BROTHERHOOD OF TEAMSTERS. ---Filed memo endorsed that the motion to quash is denied etc. So ordered, Lasker, J.
5-2-77	IN RE: GJSET SERVED ON ABRAHAM GORDON, PRES. LOCALS 719 & 805 INTER'L BROTHERHOOD OF TEAMSTERS. ---Filed memo endorsed that the motion to quash is denied etc. So ordered, Lasker, J.
5-2-77	IN RE: THOMAS MANCUSO, GJ WITNESS---Filed memo endorsed that motion is denied for the reasons stated on the record in open court. So ordered, Knapp, J.
5-2-77	IN RE: VINCENT SAUSTO, GJ WITNESS---Filed memo endorsed that motion is denied for the reasons stated on the record in open court. So ordered, Knapp, J.
5-3-77	IN RE: GJS SERVED ON AMERICAN EXPRESS CARD DIVISION, ---Filed affdvt & show cause order to stay subpoena etc. in the matter of GJ proceedings of Pedro Archuleta by Americo Badillo Veiga, Knapp 5-6-77 at 2 P.M. Rm. 506. Knapp, J.

SUBPOENAS AND HABEAS CORPUS AD TEST

M11-188

DATE	PROCEEDINGS
5-3-77	IN RE: APPLICATION OF MILTON POLLACK---Filed brown envelope ordered sealed & placed in the vault in clerks office to be opened only by order of the court.
5-3-77	IN RE: MILTON POLLACK,---Filed affirmation & notice of motion of Robert I. Kalina for an order quashing the GJSDT.,ret 5-4-77 at 2 P.M.
5-3-77	IN RE: MILTON POLLACK GJ INVESTIGATION---Filed memo of law in support.
5-3-77	IN RE: THOMAS MANCUSO et ano, witness before GJ,---Filed affdvt of Michael D. Abzug.
5-3-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C ^{ad test} for Ernest Staten, writ satisfied 4-21-77, Lasker, J.
5-3-77	USA -v- JOHN DOE ---Filed writ of H/C ad test for ^{ad test} Anthony Guida, writ satisfied 5-2-77, MacMahon, J.
5-3-77	USA -v- JOHN DOE ---Filed writ of H/C ad test for Charles Anthony Guida writ satisfied 5-3-77, MacMahon, J.
5-3-77	IN RE: GJ SUBPOENA SERVED ON PEDRO ARCHULETA,---Filed notice of motion to intervene by Board of Nat'l Ministries, American Baptist Churches.
5-3-77	IN RE: GJ SUBPOENA SERVED ON PEDRO ARCHULETA,---Filed notice of sworn motion to intervene of Nelson W. Canals.
5-3-77	IN RE: LOUIS MORALES CONTEMPT PROCEEDINGS,---Filed order that Louis Morales be committed to custody of AG of US at MCC, until willing to testify before GJ or until expiration of GJ on 3-14-78, subject to 18 mos. extension, MacMahon, J.
5-3-77	IN RE: GAETANO CIRILLO, LOUIS MORALES, MICHAEL DESALVO,--- Filed order that the above named deft's be released from MCC for failing to testify in connection to GJ which has now been concluded. Knapp, J.
5-4-77	IN RE: ANTHONY CICCIONE (MEF) DEFT'S ATTY ONLY (RICHARD D. FRIEDMAN) PRESENT, APPLICATION FOR BAIL PENDING APPEAL IS DENIED. KNAPP, J.
5-4-77	IN RE: GJ SUBPOENA SERVED UPON PEDRO ARCHULATA---Filed affdvt & amendment to motion to quash the subpoena by Joan Friedland.
5-4-77	IN RE: GJ SUBPOENA SERVED UPON PEDRO ARCHULETA---FILED second supplemental memo of law in support of motion to quash & in reply to govts answering papers.
5-5-77	IN RE: MILTON POLLACK ---Filed memo endorsed that counsel for deft having specifically waived oral argument, the motion is denied, since deft's personal appearance before the GJ is not required, no fifth amendment questions are presented, further, we are persuaded that the GJ proceedings are being conducted in good faith, so ordered. Knapp, J.
5-5-77	Filed one brown envelope ordered sealed & kept in the vault until further order of the court. So ordered. Knapp, J.
5-5-77	IN RE: GJ SUBPOENA SERVED ON JAMES EARL RAY, JR. CO. C/RD DIVISION---Filed notice of motion to produce records, etc.
5-5-77	IN RE: GJ SUBPOENA SERVED ON JAMES EARL RAY, JR. CO. C/RD DIVISION---Filed affdvt in support of motion to quash subpoena for an evidentiary hearing, by Jose Antonio Lago.
5-5-77	IN RE: GJ SUBPOENA SERVED ON JAMES EARL RAY, JR. CO. C/RD DIVISION---Filed memo of law in support of motion to quash subpoena, etc.
5-5-77	USA -v- TEDDY BUCKWOLD---Filed deft's motion as a motion to reduce sentence & to vacate the order of commitment, the motion is in all respects denied. So ordered. Ryatt, J.
5-5-77	IN RE: DAVID HARDING, WITNESS BEFORE GJ,---Filed brown envelope ordered sealed until further order of the court. Knapp, J. Also Alan Levine.
5-6-77	IN RE: EARL OSBORNE WITNESS BEFORE GJ,---Filed order that resp. testify before GJ. This order shall become effective only if after the date of this order resp. refuses to testify. Knapp, J.

H

SUBPOENAS AND HABEAS CORPUS AD TEST

M 11-188

DATE	PROCEEDINGS
5-9-77	IN RE: GJ SUBPOENA DUCES TECUM OF INRAM CORP. et al---Filed notice of govts motion to enforce grand jury subpoenas duces tecum issued to petitioners.
5-9-77	IN RE: GJ SUBPOENA DUCES TECUM OF INRAM CORP. et al- Filed affdvt of Jo Ann Harris in opposition to motion to quash & in support of the motion to enforce.
5-9-77	IN RE: GJ SUBPOENA DUCES TECUM OF INRAM CORP. et al---Filed govts memo of law in opposition to motion to quash & in support of motion to enforce.
5-9-77	USA -v- JOHN DOE---Filed govts request for the Voir Dire of the May 1977 additional GJ.
5-9-77	IN RE: GRAND JURY SUBPOENA SERVED ON PEDRO ARCHULETA---Filed govts memo of law in opposition of motions of intervenors.
5-6-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test. for Gabriel Kuriata, writ issued ret. 5-16-77.
5-9-77	Filed one brown envelope ordered sealed, until further order of the Court. Knapp, J. AUSA Jossen.
5-9-77	IN RE: GJSDT ADDRESSED TO INRAM CORP., S.R.M.C.MCT.CORP. et al---Filed supplemental combined notice of motion & affdvt to quash SDT & for other relief of Irving F. Seidman.
5-9-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C ad test for Bruce Wheaton, Writ issued ret. 5-16-77.
5-10-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Frederick Richard Drew, writ issued ret. 5-18-77.
5-11-77	IN RE: GJS SERVED ON AMERICAN EXPRESS CO. CARD DIVISION.---Filed for a stay pending appeal, the same is denied. KNAPP, J.
5-10-77	Filed one brown envelope ordered sealed until further order of the court, Knapp, J. Barry Kingham AUSA
5-11-77	Filed one brown envelope re. Americo Badillo Veiga contents ordered sealed & kept in the vault until further order of this court. So ordered. Knapp, J.
5-9-77	IN RE: ANTHONY CICCONE.---Filed record of transcripts dated 5-4-77 before Knapp, J.
5-11-77	IN RE: GJS SERVED ON AMERICAN EXPRESS CO, CARD DIV.---Filed memo & order; accordingly, the motion to quash is in all respects denied Knapp, J.
5-11-77	IN RE: SHERRY SILBER & PHILIP BARR GJ WITNESS--- Filed affdvt of Michael D. Abzug.
5-11-77	IN RE: FRANK BALLANTE WITNESS IN SPECIAL GJ, ---Filed affdvt & show Cause order for Frank Ballant to show cause why he should not undergo acoronary arteriography to permit a conclusive finding of whether he has a heart disease & is capable to testify before a special GJ. Ret. 5-16-77 at 10:00 A.M. rm. 506, Knapp, J.
5-11-77	IN RE: GJ subpoena served on American Express Co. Card Division--- Filed notice of appeal on order denying his motion to quash of Americo Badillo Veiga.
5-11-77	IN RE: GJ subpoena served on American Express Co. Card Division account card of Americo Badillo Veiga,---Filed notice of motion for leave to appeal in forma pauperis.
5-11-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C ad test for Herbert Yagid, writ issued ret. 5-16-77.
5-11-77	USA -v- JOHN DOE ---Filed writ of H/C ad test that Donald Head after his testimony be returned to the US Penitentiary, Terra Haute Indiana. Writ allowed. Carter, J.

DATE	PROCEEDINGS
5-12-77	IN RE: PHILIP BARR WITNESS BEFORE GJ.---Filed notice of motion of Philip Barr for inspection of electronic surveillance applications & order. Ret. 5-13-77 at 10:00 A.M. before Knapp, J. Filed memo in support of motion.
5-12-77	IN RE: GJSOT ADDRESSED TO INRAM CORP. ETC.---Filed memo endorsed on motion dated 5-9-77, motion granted for the reasons stated on the records in detail. The subpoena is returnable 5-20-77 at 2 pm. So ordered Knapp, J.
5-12-77	IN RE: GJS ISSUED TO STEVEN RINGEL---Filed memo endorsed on motion dated 4-29-77, Motion denied for the reasons stated on the record in open court on 5-10-77. So ordered. Knapp, J.
5-12-77	IN RE: GJS SERVED ON STEVEN RINGEL 9-14-76 SPECIAL GJ.---Filed memo endorsed on notice of motion dated 4-29-77, see above.
5-13-77	IN RE: GJS SERVED ON PEDRO ARCHULETA,---Filed additional affdvt & memo of law in support of motion to quash of Joan Friedland. Lasker, J.
5-12-77	USA -v- JOHN DOE --- FILED AFFDVT FOR WRIT OF H/C for Betty McFarland writ issued ret. 5-17-77.
5-12-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C ad test for Hunter B. Brashier, writ issued ret. 5-26-77.
5-12-77	USA -v- JOHN DOE--- Filed affdvt for writ of H/C ad test for Manuel Melendez, writ issued 5-20-77.
5-13-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Vankirk-Moore, writ issued 5-20-77.
5-16-77	IN RE: GJS ON AMERICAN EXPRESS CO. CARD DIVISION,---Filed memo endorsed on notice of motion dated 5-12-77, motion granted since we cannot certify in writing that the appeal is not taken in good faith. So Ordered Knapp, J.
5-16-77	IN RE: GJSOT ADDRESSED TO INRAM CORP. et al,---Filed memo endorsed on notice of motion dated 5-9-77, Motion is denied since the document was filed untimely, therefor deemed not to have been filed. So ordered Knapp, J.
5-13-77	USA -v- JOHN DOE---Filed writ of H/C ad test for William Rodman, writ is hereby allowed. MacMahon, J.
5-13-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Steven Moy a/k/a Woe S. Moy, writ issued ret. 5/18/77.
5-17-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Lionel Marquez writ issued, ret. 5-27-77.
5-16-77	IN RE: MARIA T. CUETO & RAISA LEMKUN---Filed true copy of USCA order & opinion and is hereby affirmed by Clerk of Court.
5-13-77	IN RE: PHILIP BARR WITNESS BEFORE GJ---Filed memo endorsed having advised the parties that we might consult the govt ex parte if necessary, we conclude that no such necessity exists & that the documents submitted are sufficient to preclude any finding of irregularity. Accordingly no relief is warranted. Knapp, J.
5-17-77	IN RE: FRANK BALLANTE SCJ WITNESS---Filed memo endorses on show cause order dated 5-11-77, The court orders Ballante to testify before GJ at 2:00 p.m. on 5-19-77 or undergo arteriography, should he appear to testify a doctor will be present. So ordered. Stewart Jr. J.
5-19-77	IN RE: MARIA T. CUETO & RAISA LEMKUN---Filed affdvt of Elizabeth M. Fink.
5-19-77	IN RE: GJS ON PEDRO ARCHULETA---Filed notice of motion for Joan Friedland concerning additional subpoena served.
5-19-77	IN RE: GJS ON PEDRO ARCHULETA---Filed notice of motion for Joan Friedland concerning additional subpoena served.

J

Subpoenas and Habeas Corpus Ad Test

M 11-188

DATE	PROCEEDINGS
5-20-77	IN RE: AMERICAN EXPRESS CO. CARD DIV.---Filed affdvt & show cause or
5-20-77	IN RE: AMERICAN EXPRESS CO. CARD DIV.---Filed order that Frank Ballante
5-20-77	IN RE: AMERICAN EXPRESS CO. CARD DIV.---Filed memo in support.
	be committed to custody of atiny general until willing to testify
	or until expiration of term of GJ 3-14-73subject to 18 mo. extent
5-23-77	IN RE: Maria Cueto---Filed transcript of record of proceedings dated
5-23-77	IN RE: MARIA CUETO---Filed transcript of record of proceeding dated
5-23-77	IN RE: GRAND JURY MATTER---Filed transcript of record of proceeding
5-23-77	IN RE: AMENDED PETITION OF ALVA STEAMSHIP CO., ETC.---Filed transcript
5-23-77	IN RE: PEDRO ARCHULETA---Filed transcript of record of proceeding dated
5-23-77	IN RE: Alvin Bragg---Filed transcript of record of proceeding dated
5-23-77	IN RE: INVESTIGATION OF SERA ---Filed transcript of record of proceed-
5-23-77	IN RE: NICHOLAS CIRILLO---Filed transcript of record of proceeding
5-23-77	IN RE: PEDRO ARCHULETA---Filed transcript of record of proceeding dated
5-23-77	IN RE: GRAND JURY MATTER---Filed transcript of record of proceeding
5-23-77	IN RE: WILLIAM G. BRODEN JR, ETC -v- R. ABBOTT SINSKY & MINNA SINSKY---Filed
5-23-77	IN RE: CIRENO SALERNO ET ANO.---Filed transcript of record of proceed-
5-23-77	IN RE: GJSdT---Filed brown envelope ordered sealed & placed in vault
5-23-77	IN RE: MARIA CUETO & RAISA NEMIKIN---Filed memo of Stewart, J denying
5-23-77	USA -v- Jane Doe---Filed writ of H/C ad test for Betty McFarland, writ
5-23-77	IN RE: PEDRO ARCHULETA GJS ---Filed affdvt of Thomas E. Engel.
5-23-77	IN RE: FRANK BALLANTE ---Filed photocopy of medical report dated
5-23-77	5-23-77 ---For disposition of this order to show cause, see order
5-25-77	IN RE: GJS SERVED ON THE AMERICAN EXPRESS CREDIT CARD DIVISION---Filed
5-25-77	IN RE: GJS SERVED ON THE AMERICAN EXPRESS CREDIT CARD DIVISION---Filed
5-25-77	IN RE: HOSSEIN MOHAMMAD KIA, GJ WITNESS---Filed application & order
	that the said Hossein Mohammad Kia give testimony before the Grand
	Jury which he refuses to give on the basis of self-incrimination.
	this order shall become effective upon failure to cooperate & com-
	ply with order. Stewart, J.

SUBPOENAS AND HABEAS CORPUS AD TEST

M 11-188

DATE	PROCEEDINGS
5-25-77	USA -v- JOHN DOE ---Filed writ of habeas corpus ad test for Herbert- Yagid, writ issued ret. 5-16-77. Knap, J.
5-23-77	IN RE: GAETANO CIRILLO ---Filed true copy of USCA order affirming judgment of District Court ---Judgment entered clerk dated 5-26-77.
5-27-77	Filed one brown envelope ---Submitted ex parte & for in camera inspection only. Ordered sealed Owen, J.
5-27-77	IN RE: FRANK BALLANTE ---Filed defts application for astay of surrender until a physical examination has been concluded & a determination is made by the court. Stewart, J.
5-27-77	IN RE: AMERICAN EXPRESS CO. CARD DIVISION. ---Filed memo endorsed, motion denied. See minutes of 5-26-77 stay denied, So ordered, Owen, J. <i>Filed in Court & no date record. F.F.</i>
5-31-77	IN RE: LOCAL 144, HOTEL-HOSPITAL ETC. -v- USA ---Filed transcript of record & proceedings dated 3-17-77 Metzner, J.
5-31-77	IN RE: IRA RASHEOFF M.D. ---Filed transcript of record & proceedings dated 3-2-77 Frankel, J.
5-31-77	IN RE: THOMAS MANCUSO ---Filed transcript of record & proceedings dated 3-9-77 Bryant, J.
5-31-77	IN RE: GJ MATTER OF LOUIS MORALES ---Filed transcript of record & pro- ceedings dated 4-28-77 MacMahon, J.
5-27-77	IN RE: GJS SERVED ON PEDRO ARCHULETA ---Filed memo opinion # 45964, all motions are denied in accordance with this opinion. This opinion does not deal with Archuleta's motion to quash subpoena on grounds of illegal wiretapping. Lasker, J.
6-1-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C ad test for Theodore Buchwald, writ issued ret. 6-6-77.
6-1-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C ad test for Ricardo De Chabert, writ issued ret. 6-13-77.
6-1-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C ad test for Bruce Taylor writ issued ret. 6-8-77.
6-2-77	IN RE: GJS SERVED ON PEDRO ARCHULETA, Filed additional affdvt of Doris Peterson concerning illegal electronic surveillance.
6-2-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C ad test for Charles Ross Carino, writ issued ret. 6-6-77.
6-3-77	IN RE: JOHN D'Amelio. Filed order that resp. be confined until he is willing to testify before p. of 6-3-76 or until 4 mos. after this order (3-3-77) or until expiration of term of said GJ which ever occurs first. So ordered, Knap, J.
6-3-77	IN RE: LUGENIA BARNES GJ WITNESS ---Filed affdvt of Thomas M. Fortuin.
6-2-77	IN RE: LUGENIA BARNES GJ WITNESS ---Filed memo endorsed, court finds no conflict of interest. Application of by Alan Levine to compel testimony before GJ. Filed 6-2-77. Stewart, J.
6-3-77	IN RE: LUGENIA BARNES GJ WITNESS ---Filed report of Alan Levine to compel testimony before GJ. Filed 6-3-77. Stewart, J.
6-3-77	IN RE: LUGENIA BARNES GJ WITNESS ---Filed report of Alan Levine to compel testimony before GJ. Filed 6-3-77. Stewart, J.
6-3-77	IN RE: LUGENIA BARNES GJ WITNESS ---Filed report & recommendation of special master.
6-3-77	IN RE: INGRAM CORP., ET AL ---Filed brown envelope ordered sealed & placed in vault to be opened only by order of the court. Knap, J.
6-3-77	IN RE: MARGARET & MAUDIE BICKOFF ---Filed transcript of record of proceedings dated 3-24-77 Wyatt, J.
6-6-77	IN RE: PETER PEDRO ---Filed transcript of record of proceedings dated 4-9-77 Stewart, J.
6-6-77	IN RE: MICHAEL D. SALVO ---Filed transcript of record of proceedings dated 4-28-77 MacMahon, J.

DATE	PROCEEDINGS
6-6-77	IN RE: MAY 1976 ADDITIONAL GJ. ---Filed transcript of record of proceedings dated 5-2-77, Frankel, J.
6-6-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C ad test for Dollree Mann, writ issued, ret. 6-14-77.
6-6-77	IN RE: ANTHONY WISORE GJ WITNESS. ---Filed memo endorsed motion is denied 45 minutes. So ordered Owen, J.
6-7-77	IN RE: GJJS SERVED ON PEDRO ARCHULETA. ---Filed memo endorsed on show cause order & affdvt of Joseph S. Koning dated 6-7-77--Motion denied. See sealed transcript. So ordered, Brient, J.
6-8-77	USA -v- JOHN DOE ---Filed writ of H/C ad test for Frank Daniel, writ allowed, Satisfied 6-2-77 Owen, J.
6-8-77	USA -v- JOHN DOE ---Filed writ of H/C ad test for Gabriel Kuriata, writ allowed. Writ satisfied Stewart, J.
6-9-77	Filed one brown envelope ordered sealed. Brient, J. AUSA Audrey Strauss.
6-9-77	Filed one brown envelope ordered sealed (docketed) & forwarded to Part I judge to be heard (calendered) for oral argument. Brient, J.
6-13-77	IN RE: THOMAS MARCUSO GJ WITNESS. ---Filed affdvt of Alan Goldston.
6-13-77	IN RE: GRAND JURY PROCEEDINGS. ---Filed brief of Joseph S. Koning in support of motion to quash subpoena.
6-13-77	IN RE: GJS SERVED ON PEDRO ARCHULETA. ---Filed govts' memo of law.
6-10-77	USA -v- JOHN DOE ---Filed affdvt for writ of H/C ad test for Betty McFarland, writ issued, ret. 6-15-77.
6-6-77	IN RE: THOMAS MARCUSO GJ WITNESS. ---Filed memo endorsed--I decline to sign the within proposed order, which I regard as representing a frivolous application. The purpose of the commitment is coercive to compel testimony. Release of movant would dilute the coercive effect of the commitment. So Ordered. Bricant, J.
6-15-77	IN RE: GJS SERVED ON PEDRO ARCHULETA. ---Filed motion of Joan Friedland for an interpreter in the Grand Jury Room.
6-15-77	IN RE: GJS SERVED ON PEDRO ARCHULETA. ---Filed motion of Joan Friedland requesting instructions of the Grand Jury.
6-15-77	IN RE: GJS SERVED ON PEDRO ARCHULETA. ---Filed motion of Joan Friedland for protective orders.
6-15-77	IN RE: GJS SERVED ON PEDRO ARCHULETA. ---Filed memorandum opinion #46,013-- Archuleta's motions to quash the subpoena and/or to stay its execution are denied---It is so ordered--Lasker, J.
6-15-77	USA -v- Sam Brown. ---Filed order of arrest for debt, for a hearing for willful refusal to comply with GJS. ---It is further ordered that debt be arrested by authorized FBI agents Between 8:00 AM & 4:45PM and brought before this court for setting bail & time of hearing. Bricant, J.
6-16-77	IN RE: CERTAIN RECORDS SUBPOENED BY THE US GOVT. & MAINTAINED BY THE HISPANIC ASSOC. FOR DRUG FREE SOCIETY. ---Filed affdvt, exhibits & show cause order ret. 6-17-77 at 1:45 P.M. Rm 506 US Court.
6-16-77	IN RE: GJS SERVED ON PEDRO ARCHULETA. ---Filed affdvt of Linda Hoffa.
6-17-77	USA -v- John Doe. ---Filed writ of H/C ad test for Bruce Wheaton, writ issued 6-2-77. Knapp, J.
6-17-77	IN RE: PEDRO ARCHULETA WITNESS IN GJ. ---Filed order that debt give testimony & provide other information as to matters about which he may be questioned before GJ. Bricant, J. (Filed in Court.)
6-17-77	IN RE: PEDRO ARCHULETA WITNESS IN GJ. ---Filed application of Robt. B. Fiske, Jr. for immunity. (Filed in Court.)
6-17-77	IN RE: PEDRO ARCHULETA WITNESS IN GJ. ---Filed affdvt of Thomas E. Engel. (Filed in Court.)

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SUBPOENAS AND HABEAS CORPUS AD TEST

M 11-188

DATE	PROCEEDINGS
6-17-77	IN RE: GJS SERVED ON PEDRO ARCHULETA---Filed memo endorsed on motion dated 6-15-77 the within motion is granted in part & denied in part. The court has this date given additional instructions to the 11-9-76 CJ. in open court in the presence of Pedro Archuleta, his counsel AUSA Engel & substantial group of citizen spectators, see transcript of hearing this date. So ordered, Brieant, J.
6-17-77	USA -v- JOHN DOE---Filed writ of H/C ad test for Manuel Mendez, writ satisfied, Brieant, J.
6-17-77	USA -v- JOHN DOE---Filed writ of H/C ad test for Betty McFarland, writ satisfied, Brieant, J.
6-17-77	USA -v- JOHN DOE---Filed writ of H/C ad test for Selin Valenzuela, writ allowed.
6-17-77	Filed one brown envelope ordered the within order & affdvt of Harry Batchelder be sealed, impounded & placed in cashier's vault, Brieant, J.
6-20-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Betty McFarland, writ issued 6-21-77.
6-20-77	IN RE: Certain records subpoenaed by Govt. & maintained by Hispanic assoc. for Drug Free Society Inc.---Filed govt's memo in support of its request for an order pursuant to 21 U.S.C. etc.
6-20-77	IN RE: GJS SERVED ON PEDRO ARCHULETA---Filed memo endorsed that the within motion has been disposed of in accordance with my oral directions to the parties made this date in open court. See transcript. So ordered Brieant, J.
6-20-77	USA -v- JOHN DOE---Filed writ of H/C prosequendum for Edward W. Haulsward, writ issued, Stewart, J.
6-21-77	IN RE: Certain income tax returns & taxpayer return information, Ordered sealed, Brieant, J. AUSA Jerry L. Siegel.
6-21-77	IN RE: GJ WITNESS---Thomas Mancuso---After hearing counsel for the moving party & counsel for the move in opposition the motion of Thomas Mancuso for temporary release from confinement is hereby in all respects denied. Brieant, J.
6-21-77	IN RE: CERTAIN RECORDS SUBPOENAED BY GOVT. & MAINTAINED BY HISPANIC ASSOC. FOR DRUG FREE SOCIETY INC.---Filed memo of law of Jeremiah S. Cutman in support.---Filed in court.
6-21-77	IN RE: CERTAIN RECORDS SUBPOENAED BY GOVT. & MAINTAINED BY HISPANIC ASSOC. FOR DRUG FREE SOCIETY INC.---Filed affidavit on Jeremiah S. Cutman.---Filed in court.
6-21-77	IN RE: CERTAIN RECORDS SUBPOENAED BY GOVT. & MAINTAINED BY HISPANIC ASSOC. FOR DRUG FREE SOCIETY INC.---Filed affidavit of Herbert Teitelbaum Esq.---Filed in court.
6-22-77	USA -v- JOHN DOE---Filed writ of H/C ad test for Juan Luis Morales. Writ issued, ret. 6-21-77.
6-24-77	USA -v- John Doe---Filed affidavit for writ of H/C ad test for Joseph E. Healy, writ issued, ret. 6-21-77.
6-24-77	IN RE: GJ INVESTIGATION---Filed one brown envelope ordered sealed & forwarded to part I judge for oral argument. Exhibit, J. AUSA D. BELLER.
6-24-77	IN RE: MOTIONS TO QUASH CJ.---Filed large brown envelope ordered sealed & docketed, then forwarded to part I judge for oral argument on 6-28-77. Brieant, J. AUSA D. Beller.
6-24-77	IN RE: GJS ISSUED TO AMERICAN HOME PROD. ETC.---Filed affidavit of Daniel J. Beller.
6-24-77	IN RE: GJS ISSUED TO AMERICAN HOME PROD. ETC.---Filed govt's sealed exhibits.
6-24-77	IN RE: GJS ISSUED TO AMERICAN HOME PROD. ETC.---Filed govt's affidavit etc.
6-24-77	IN RE: GJS ISSUED TO AMERICAN HOME PROD. ETC.---Filed govt's memo of law in opposition to quash.

N

SUBPOENAS & HABEAS CORPUS AD TEST

M 11-188

DATE	PROCEEDINGS
6-27-77	IN RE: GJS SERVED ON PEDRO ARCHULETA---Filed affdvt & show cause order that witness should not be held in contempt, ret. 6-30-77 at 2 P.M.
6-27-77	IN RE: GJS SERVED ON PEDRO ARCHULETA---Filed govt's memo of law.
6-28-77	IN RE: GJS SERVED ON PEDRO ARCHULETA---Filed brown envelope ordered impounded, sealed & placed in vault. Place on calander in Part I thurs. 6-30-77 at 9:45 A.M. Briant, J.
6-29-77	IN RE: GJS SERVED ON PEDRO ARCHULETA---Filed affdvt in response to show cause order, witness should not be held in contempt.
6/28-77	IN RE: THE GRAND JURY EMANELLED 10-14-76--Filed copy of show cause order to compel disclosure of material before the Grand jury that are in possession of the Dept. of Justice-ret.6-30-77 (filed in Court)
6-3-77	IN RE: THE GRAND JURY EMANELLED 10-14-76--Filed memo endorsed on show cause order filed in Court 6-28-77--Motion denied. See minutes of this date. So ordered-Owen, J.
6-30-77	IN RE: THE GRAND JURY EMANELLED 10-14-76--Filed notice of appeal by witness subpoenaed to appear before grand jury
6-29-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Chai- Prsleepmanowong, ret. 7-6-77.
6-29-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Joseph F. Healy. Writ issued, ret. 7-11-77. Frankel, J.
6-30-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Robert- DeChabert. Writ issued ret. 7-13-77.
7-1-77	USA -v- JOHN DOE---Filed one brown envelope ordered sealed until further order of the court. Owen, J.
7-1-77	IN RE: GJS SERVED ON PEDRO ARCHULETA---Filed memo endorsed on show cause order dated 6-22-77, the motion is granted, see minutes of 6-30-77, Si ordered. Owen, J.
7-1-77	IN RE: GJS SERVED ON PEDRO ARCHULETA,---Filed notice of appeal of Pedro Archuleta for contempt.
7-5-77	IN RE: PASQUALE MASCIA,---Filed affdvt, notice of motion & certificate of service of Michael B. Pollack, ret. 7-7-77 at 9:30 A.M. before Haught, Jr.
7-5-77	IN RE: GJS SERVED ON PEDRO ARCHULETA,---Filed defts memo of law.
7-5-77	IN RE: AMERICAN EXPRESS CO. CARD DIV. ACCT. AMERICO BADILLO VEIGA---Filed Filed transcript of record of proceedings, dated 5-2-77 Knapp, J. 5-6-77, 5-13-77 KNAPP, J.
7-5-77	IN RE: GJW FRANK BALLANTE,---Filed Filed transcript of record of proceedings 5-16-77, 5-20-77, 5-27-77 Stewart, J.
7-1-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Hobart Norman Darling. Writ issued, ret. 8-3-77.
7-1-77	USA -v- JOHN DOE---Filed affdvt for writ of H/C ad test for Robert Hammon Writ issued, ret. 7-11-77.
7-5-77	USA -v- JOHN DOE---Filed writ of H/C ad test, writ allowed, Bonsal, J.
7-6-77	IN RE: JOHN P. FLANNERY---Filed brown envelope, ordered impounded sealed & placed in cashier's vault. Briant, J.
7-6-77	IN RE: AFFDVT OF HARRY BATCHELDER AUSA ORDERED IMPOUNDED SEALED & placed in cahsiers vault Briant J

D. C. 199 Criminal Continuation Sheet

A TRUE COPY
RAYMOND T. BURGHARDT, Clerk
By *[Signature]*
Deputy Clerk

SUBPOENA

-B-

WAS SEVER, March 29 AT 7:00 P.M. 9:00 AM
a chaco ago

Form No. USA-33a-222 (Rev. 12-14-70) Grand Jury Subpoena

TEE:dl

United States District Court
SOUTHERN DISTRICT OF NEW YORK

TO PEDRO ARCHULETA

GREETING:

WE COMMAND YOU that all and singular business and excuses being laid aside, you and each of you appear and attend before the GRAND INQUEST of the body of the people of the United States of America for the Southern District of New York, at a District Court, to be held at Room 1403 in the United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, in and for the said Southern District of New York, on the 4th day of April 1977, at ten o'clock in the fore noon, to testify and give evidence in regard to an alleged violation of Sections 371, 841 et seq., and 921 et seq., Title 18, United States Code

on the part of the United States, and not to depart the Court without leave thereof, or of the United States Attorney.

And for failure to attend you will be deemed guilty of contempt of Court and liable to penalties of the law.

DATED: New York, N. Y. March 26, 1977.

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York

Clerk.

Note: Report at Room 450. In order to secure your witness fees and mileage, it is necessary that you retain this Subpoena and present the same at the United States Attorney's Office, Room 450, upon each day on which you attend Court as a witness.

Assistant THOMAS E. ENGEL
Tel: (212) 791-1990

Room 719

OPINION OF THE DISTRICT COURT
MAY 27, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In the Matter of the Grand Jury
Subpoena Served upon

M11-188

PEDRO ARCHULETA

MEMORANDUM

-----X
APPEARANCES:

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DENNIS CUNNINGHAM, ESQ.

LASKER, D.J.

On November 23, 1976 Pedro Archuleta, a resident of Tierra Amarilla, New Mexico, was subpoenaed to testify before a federal grand jury in the Northern District of Illinois (the "Chicago grand jury") investigating bombings in that district believed to have been committed by members of the Fuerzas Armadas de Liberacion Nacional ("F.A.L.N."). On December 23, 1976 he was served with a second subpoena from that grand jury, ordering him to provide fingerprints, a photograph and palmprints to the Chicago grand jury. After being sworn before that grand jury, advised that he was a "suspect" in its investigation and of certain constitutional rights, the witness refused to respond to the grand jury's questions. On the government's motion to hold Archuleta in contempt, he raised numerous objections to the government's good faith in calling him as a witness; to illegal wiretapping which he claimed underlay the subpoenas and questions; and to the array of the grand jury. These matters are currently being litigated in the Northern District of ^{Illinois} Chicago.

On March 29, 1977 Archuleta was served with a subpoena ordering him to appear and testify before the grand jury of the United States District Court for the Southern District of New York (the "New York grand jury"). On April 4, 1977 he moved to quash this subpoena or stay these

proceedings until the Chicago litigation is concluded, on the following grounds:

"(a) the subpoena to the New York Grand Jury is an attempt to circumvent the proceedings which are currently taking place in Chicago;

(b) The subpoena to the New York grand jury is directed to Movant, a target of the Chicago proceedings, who has stated publicly that he will refuse to testify, and is thus an attempt to incarcerate him without affording him the rights of an accused;

(c) The issuance of two simultaneous subpoenas in different Districts is unduly harassing, burdensome and coercive and as such deprives Movant of due process by requiring him to litigate and placing his freedom in jeopardy in two distinct jurisdictions conducting duplicative investigations;

(d) The issuance of the New York subpoena is an attempt to prevent Movant from litigating the serious jury composition issue which is currently before the District Court in Chicago;

(e) The issuance of the New York subpoena is an attempt to manipulate the situs of the investigation or to 'shop' for a favorable forum on the part of the FBI and the Department of Justice;

(f) the subpoenas -- process of a judicial body -- are being used by the executive arm of government, in violation of the separation of powers doctrine to coerce, intimidate and incarcerate Movant."

In addition, he moves to quash the subpoena on the following grounds:

"(a) The composition of grand juries in the Southern District shows a serious

underrepresentation of Hispanic peoples and thus deprives Movant of Due Process;

(b) The subpoena constitutes an abuse of the grand jury process in that it seriously threatens Movant's First Amendment rights of association and the free expression of political beliefs...

(c) The subpoena constitutes an abuse of the grand jury process in that the grand jury is performing the executive function of locating fugitives in violation of the separation of powers doctrine."

The government responded to this barrage of claims with a memorandum of law and two sets of affidavits. The first affidavit, denoted the "open" affidavit was submitted by Assistant United States Attorney Thomas Engel and describes the nature of the grand jury's investigation in New York and its reasons for calling Archuleta. In essence, the New York grand jury is investigating bombings believed to have been committed by the F.A.L.N.; one person allegedly responsible for the bombings was a member of an organization -- the National Commission on Hispanic Affairs of the Protestant Episcopal Church -- to which Archuleta belonged in 1972-73. In addition to the "open" affidavit, the government filed under seal ex parte affidavits from Engel and an FBI agent. Movant has objected to these ex parte submissions; however, the court has not read the ex parte material in the belief that wherever possible matters should be decided without reference to information not subject to adversarial comment and rebuttal.

After the government response was filed, but before argument on the motions, a news story appeared in the April 17, 1977 New York Times concerning these grand jury investigations into the F.A.L.N. bombings which was based in part on nonpublic information attributed in the article to law enforcement sources. Some of the previously undisclosed information concerned Archuleta directly and was of a highly adverse character. On April 19th Archuleta filed an "Additional Motion to Quash and/or for a Stay and/or Hearing on Governmental Misconduct" on grounds relating to the disclosure of information. The government has responded by affidavit and oral argument to this aspect of the motion to quash as well.

Finally, Archuleta moved in early May to amend his motion to quash to add a claim that the subpoena to him resulted from information gathered by illegal electronic surveillance. The government has not yet responded to this motion.

In addition to the motion to quash, four motions to intervene have been filed by: The Board of National Ministries of the American Baptist Church; Nelson Canals, a law student at the University of Puerto Rico and Secretary General of the Committee to Free the Five Puerto Rican Political Prisoners; several ministers of churches in Puerto Rico; and by a collection of some 10 - 15 organi-

zations and as many individuals claiming various and diverse interests in the outcome of the litigation. The government opposes all the motions to intervene.

Archuleta's motion to quash is another in a series of recent challenges brought by persons subpoenaed by the federal grand jury investigating the bombing at Fraunces Tavern on January 24, 1975, and other bombings believed to have been committed by the F.A.L.N. In January of this year, grand jury subpoenas were issued to Bishop Milton Wood, and to Maria Cueto and Raisa Nemikan, all members of the National Hispanic Commission of the Protestant Episcopal Church. Both Cueto and Nemikan moved before Judge Pierce to quash these subpoenas on the grounds, inter alia, that their First Amendment rights to free exercise of religion and free association were being violated. On February 4, 1977 Judge Pierce denied the motions and ordered Nemikan and Cueto to testify. In re Grand Jury Subpoena of Bishop Wood, et al., F. Supp. (S.D.N.Y. 1977). Each refused to testify on Fifth Amendment grounds and each was granted immunity. They persisted in refusing to testify and on the government's motion to hold them in contempt, brought before Judge Frankel, argued that the immunity conferred was inadequate to protect Fifth Amendment rights and that the questions put were unlawfully derived from illegal wiretapping. Cueto also raised again the First

Amendment objections ruled on by Judge Pierce. After submission of affidavits by the government, Judge Frankel ruled that no illegal wiretapping had occurred, rejected contemnors' other claims and held them in contempt. This order was affirmed by the Court of Appeals. In re Cueto and Nemikan, Grand Jury Witnesses, Nos. 1066, 1067 (2d Cir. Mar. 28, 1977). Nemikan and Cueto remain in custody in civil contempt of the grand jury.

I.

Archuleta argues that the subpoena should be quashed because the grand jury has been drawn from an array from which cognizable group -- consisting of Latino and Hispanic Americans -- has been systematically excluded, in violation of constitutional and statutory requirements. See U.S. Const. Am. 5; 28 U.S.C. §1861 et seq. The witness also moves at this time for production by the Clerk's office of certain "information, books and records concerning selection, qualification and summons of people for jury service in this District, in accordance with the provisions of ... 28 U.S.C. §1867(d) and Article X of the 'Jury Plan' now in operation in this district," for use in connection with his challenge to the array. The government opposes Archuleta's application, on the ground that as a witness he lacks standing to challenge the composition of the grand jury.

The Federal Jury Selection and Service Act of 1968, 28 U.S.C. §1861, declares it to be the "policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community." Although the statute is not intended to require "precise proportional representation" of every minority and majority group in society, it is intended to assure that no "cognizable group" is systematically excluded from grand jury service. See United States v. Jenkins, 496 F.2d 57 (2d Cir.), cert. denied, 420 U.S. 925 (1974). The Act further provides that "No citizen shall be excluded from service as a grand ... juror ... on account of race, color, religion, sex, national origin or economic status." 28 U.S.C. §1862.

To achieve these ends, every district court is required by 28 U.S.C. §1863 to adopt a plan for the selection of grand and petit jurors, which must provide for use of voter registration or actual voter lists; the plan must also provide for alternative sources of names of eligible jurors in addition to the voter lists "where necessary to foster the policy and protect the rights secured by sections 1861 and 1862..." In accordance with the statute, the Southern District of New York has adopted a plan which provides for the drawing of at least 4,000

names from the registered voters list at random every four years, which names are placed in a "master wheel." Out of this array grand juries are composed by drawing names at random from the master wheel. The wheel is supplemented by additional random drawing of names when necessary and emptied every four years. At that time a new set of names is placed in the wheel from an updated voter registration list. When persons are called to serve as jurors, they are required to fill out a form indicating possible bases for exemption from service, in accordance with 28 U.S.C. §1865.

Archuleta claims that in the disposition of requests for exemptions, and in reliance on the voter registration lists themselves, this district's grand jury selection procedures systematically exclude Latino and Hispanic people. (Supplemental Affidavit of Joan Friedland). In support of this claim, Dennis Cunningham, one of Archuleta's counsel, swears on information and belief that in 1972 when the "proportion of Latinos in the general population of the District ... was 10.56%, the number of Latinos who served was 27 out of 715, or 3.77%." Archuleta also claims that Latino and Hispanic peoples are "undercounted" in the census for various reasons, and that the disparity between their representation in the general population and on grand juries is even greater. (Chrissman Affidavit)

To insure compliance with the Jury Selection Act, 28 U.S.C. §1867 provides that various persons may move to challenge the composition of grand or petit juries. A "defendant" or the Attorney General of the United States in a criminal case may move before trial to dismiss the indictment or stay proceedings on "the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury," §1867(a), (b), and "in civil cases ... a party may move to stay the proceedings on the ground of substantial failure to comply with the provisions of this title in selecting the petit jury." §1867(c). Archuleta argues that however his status is defined, he must be a party in either a civil or criminal case for purposes of §1867; he thus claims a right to discovery of the grand jury records pursuant to §1867(d), which provides that:

"(d) Upon motion filed under subsection (a), (b), or (c) of this section, containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with the provisions of this title, the moving party shall be entitled to present in support of such motion the testimony of the jury commission or clerk, if available, any relevant records and papers not public or otherwise available used by the jury commissioner or clerk, and any other relevant evidence. If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting the grand jury, the court shall stay the proceedings pending the selection

of a grand jury in conformity with this title or dismiss the indictment, whichever is appropriate. If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting the petit jury, the court shall stay the proceedings pending the selection of a petit jury in conformity with this title."

Section 1867(f) of the Act prohibits disclosure of grand jury selection records for the wheel currently in use, "except pursuant to the district court plan or as may be necessary in preparation of a motion under subsection (a), (b) or (c) of this section."^{1/} Disclosure of grand jury selection records in violation of this prohibition is punishable by up to one year in prison. It is therefore evident that Congress intended not to permit disclosure of the type sought here unless the applicant is entitled to move under §1867(a), (b) or (c) to challenge the grand jury array.

Archuleta seeks to bring himself within the statute by arguing that the intent of the legislation was to insure "all litigants" an opportunity to challenge the grand jury's composition, and that he is a "litigant" before the grand jury. 1968 U.S. Code Cong. & Admin. News 1792. There is no doubt that if the word "litigant" means only "one who is litigating a matter", then Archuleta is a "litigant" since he is vigorously contesting the validity of the subpoena issued. However, the words of the statutory

declaration of purpose make clear that the rights secured by the Act are secured only to "all litigants" of a certain type: namely, "all litigants in Federal courts entitled to trial by jury." 28 U.S.C. §1861. As a witness subpoenaed to appear before the grand jury Archuleta is not at this time entitled to a trial by jury on any matter relating to the subpoena. He is therefore not within the class of "litigants" whom the Act was designed to protect.

This conclusion is supported by the specific language of 28 U.S.C. §1867(a) and (c). Subsection (a) gives to "a defendant in a criminal case" the unqualified right to challenge the grand jury array as not in compliance with the statute. Archuleta, however, has not even been named as a "target" of the investigation in New York, and is in no sense a "criminal defendant" "entitled to trial by jury." Nor is Archuleta a "party" in a "civil case" within the meaning of subsection (c), which grants the right to challenge only the selection of the "petit jury." Failure to specify that a civil litigant moving under subsection (c) could challenge the grand, as well as the petit jury, indicates that Congress did not intend to include within its definition of parties in civil cases a witness appearing before the grand jury.

We therefore conclude that Archuleta lacks standing

under the statute to challenge the grand jury array at this time. This conclusion does not necessarily mean that he lacks standing as a witness to raise a constitutional challenge to the grand jury composition. The Act specifies that its procedures are the exclusive means by which a defendant in a criminal case, the Attorney General of the United States or a party in a civil case may challenge grand or petit juries; but it ^{also} specifies that its own remedies are not exclusive, providing that "Nothing in this section shall preclude any person or the United States from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin or economic status in the selection of persons for service on grand or petit juries." 28 U.S.C. §1867(e).

In deciding whether a witness has standing to challenge on constitutional grounds the composition of a grand jury on a motion to quash the subpoena, it is appropriate to consider the range of factors set forth in United States v. Calandra, 414 U.S. 338 (1974). These include the nature of the witness' interest which is claimed to be invaded or injured; the social interests to be served by permitting a witness to invoke a particular rule or remedy; and the disruption to the legitimate ends of the

grand jury which might ensue. Balancing these factors, we conclude that the Constitution does not require that a witness in Archuleta's position be permitted to challenge the composition or selection of the grand jury.

Archuleta relies primarily on United States ex rel. Chestnut v. Criminal Court of the City of New York, 442 F.2d 611 (2d Cir. 1971) to support his standing to raise this challenge.^{2/} Petitioners there sought a writ of habeas corpus releasing them from a state sentence for criminal contempt of the grand jury for refusing to answer questions. In a footnote, the Court of Appeals, while "agreeing with the premise that the grand jury assumes its greatest responsibility in deciding whether to indict," nevertheless held "that petitioners may challenge the composition of the 1964 grand jury." 442 F.2d at 615, note 7. The court explained:

"The grand jury's inquisitorial function offers many opportunities for the use of discretion. Here, for example, the decisions to question, to grant immunity, to phrase questions in yes-or-no fashion, and finally to initiate punishment for contempt, affected substantial interests of the petitioners and were neither inevitable nor ministerial."

"In particular," the court went on to note that:

"the grand jury might have chosen to proceed against the recalcitrant petitioners under [a law] providing

a statutory maximum penalty of 30 days imprisonment ... Instead, the grand jury ordered the filing of informations charging criminal contempt under former Penal Law §600(6) punishable by up to a years' imprisonment."

The court apparently concluded that a witness, like a defendant, could suffer from the possibility of actual bias which might influence an unfairly constituted grand jury's exercise of its inquisitorial functions.

The Chestnut decision does not discuss the relative importance of certain factors on which it may have relied and which are absent in this case. Foremost among these is that the present challenge arises on a motion to quash the subpoena. The witness has not yet refused to testify, has not yet been held in contempt, and thus has suffered no present injury arising out of the grand jury's subpoena. The possibility that no such injury will ever occur suggests that consideration of the challenge may be premature, even under Chestnut. In addition, in federal grand jury proceedings it is the United States Attorney's office which makes the decision to seek immunity for a witness, and the court (not the grand jury) which grants immunity; the decision to move to hold a witness in contempt is also made by the United States Attorney. These limitations on the grand jury's discretion in handling a recalcitrant witness may warrant a conclusion that the witness' interest

in the unbiased exercise of the federal grand jury's function is not sufficiently great to warrant his raising a challenge to its composition.

There is no denying, however, that even in the federal system a grand jury exercises substantial discretion in calling and questioning witnesses, and that under the reasoning of Chestnut, such a witness has a constitutionally protected interest in assuring that the grand jury is not tainted by the impermissible exclusion of racial or ethnic groups. It is necessary, nonetheless, to reconsider Chestnut in light of subsequent rulings in related areas by the Supreme Court and other circuits. In United States v. Calandra, supra, 414 U.S. at 345 (decided three years after Chestnut), the Court quoted extensively and with approval from Blair v. United States, 250 U.S. 273, 281-82 (1919). In Blair, the Court had held that a witness could not refuse to testify before the grand jury on the ground that the particular grand jury lacked jurisdiction to investigate the acts in question or that the statute defining the criminal conduct under investigation was unconstitutional. The Blair court gave a restricted reading to the matters which a witness could raise in defense of a contempt charge:

"there is a constitutional exemption from being compelled in any criminal case to be a witness against oneself ... some confidential matters are

shielded from considerations of policy, and perhaps in other cases for special reasons a witness may be excused from telling all he knows.

But aside from exceptions and qualifications ... the witness is bound not only to attend but to tell what he knows in answer to questions framed for the purpose of bringing out the truth of the matter under inquiry.

He is not entitled to urge objections of incompetence or irrelevancy, such as a party might raise for this is no concern of his.

On familiar principles, he is not entitled to challenge the authority of the court or of the grand jury, provided that they have a de facto existence and organization." (emphasis added)

The latter sentence was specifically quoted with approval in Calandra, supra, and broadly read seems to require that Archuleta's claim be rejected.^{3/}

In Calandra, the Court held that a witness called before the grand jury could not refuse to testify on the ground that the basis for the questions put was derived from evidence obtained in violation of the Fourth Amendment; in other words, that the exclusionary rule did not apply in grand jury proceedings. The Court weighed heavily the disruptive effect permitting such challenges would have on the grand jury:

"Permitting witnesses to invoke the exclusionary rule before the grand jury would precipitate adjudication of issues hitherto reserved for

trial on the merits and would delay and disrupt grand jury proceedings. Suppression hearings would alter the orderly progress of an investigation and might necessitate extended litigation of issues only tangentially related to the grand jury's primary objective. The probable result would be protracted interruption of grand jury proceedings."

This reasoning applies a fortiori to challenges to the composition of the grand jury. Proof of systematic exclusion is a difficult and time consuming process, as is defending against such a challenge; litigation of this sort might frequently be expected to exceed or seriously invade the life of a grand jury.

Calandra does not control disposition of the question before us; certain interests considered relevant there are obviously different from those here at stake. The Court, reasoning that the "exclusionary rule" was adopted solely in order to deter illegal police conduct, decided that it was necessary to ascertain what deterrent values would be served by prohibiting use of that testimony before the grand jury. It concluded that little additional deterrent effect would be achieved and that the social interest in deterring illegal police conduct would be little advanced if witnesses -- in addition to defendants -- were permitted to invoke the exclusionary rule. The Court also found that no new violation of a witness' constitutional rights under the Fourth Amendment

arose upon the grand jury's use of illegally seized evidence, since a witness is normally required to provide to the grand jury all information at his disposal. It might be argued that a witness has a stronger interest in assuring that the grand jury which proposes to question him is properly constituted than in preventing a lawfully constituted grand jury from using evidence illegally obtained by other branches of government. However, while the witness' interest may be greater, the obtrusive effect on grand jury proceedings from the "average" challenge to the grand jury array will doubtless be more substantial than from the average suppression hearing.

Moreover, the social interests to be served by permitting a witness to challenge the grand jury array are already substantially protected by numerous other available parties and remedies. The defendant or Attorney General in any criminal case may challenge the array of the grand jury which brought the indictment, regardless of whether the defendant is a member of the group claimed to have been excluded. Most if not all grand juries return indictments, and so there will usually be one party with a substantial interest in closely examining the grand jury array for compliance with statutory and constitutional requirements. Moreover, civil suits challenging grand jury selection procedures may be brought by persons who

are members of the group allegedly excluded. Finally, a witness charged with criminal contempt of a federal grand jury is at least arguably within the class of persons authorized by the Federal Jury Selection Act to challenge the grand jury array, in that such a witness may be a litigant entitled to a trial by jury in federal court, see Muniz v. Hoffman, 422 U.S. 454, 475-76 (1975); Bloom v. Illinois, 391 U.S. 194 (1968), and properly regarded as a "criminal defendant" for purposes of §1867(a). Thus, as in Calandra, the added protection to the constitutional requirement of a fairly composed grand jury which would be derived by permitting a witness to bring such a challenge is marginal. There does not appear to be a compelling social need to create new remedies in the hands of grand jury witnesses in order to assure compliance with constitutional requirements.

These considerations suggest that the critical question is the extent to which the witness' interest in appearing before a properly selected grand jury outweighs the undoubted interference with effective grand jury investigations which would ensue from permitting the challenge. In Chestnut, the court only considered the witness' interest, and did not focus on the potentially obtrusive effect on grand jury proceedings that might ensue. The Supreme Court's emphasis in Calandra and other

cases on avoiding disruption of grand jury investigations, as well as certain differences discussed above between federal and state grand juries, suggest that the Court of Appeals for this circuit would decide the present issue against this witness.

At least two circuits have considered the issue since Chestnut and have reached a conclusion contrary to Chestnut. In Duncan v. United States, 456 F.2d 1401 (9th Cir. 1972) the court held that a witness lacked standing to challenge a grand jury array (on grounds that young people were systematically excluded). The Court of Appeals rejected Duncan's claim to standing under the Jury Selection Act, essentially for reasons set forth ante at pp. 10-12. With respect to the constitutional claim, the court considered Chestnut to be distinguishable since it was the United States Attorney and not the grand jury which sought to hold the witness in contempt. The Duncan court went on to quote from United States v. Blair (see pp.15-16 , ante) to conclude that the witness lacked standing to challenge the grand jury array, even though the witness had already been held in contempt (and was thus closer to the position of petitioners in Chestnut than is the witness here).

In In re Maury Santiago, 533 F.2d 727 (1st Cir. 1976) the Court of Appeals also concluded that a witness before the grand jury lacks standing to challenge its

composition. Without referring to Chestnut at all, the court wrote:

"The policies articulated in Calandra v. United States, 414 U.S. 338 (1974) concerning the smooth functioning of the grand jury severely limit the issues that may be raised in a §1826 contempt proceeding. A recalcitrant witness for example, lacks standing to challenge the composition of the grand jury. United States v. Duncan, 456 F.2d 1401 (9th Cir. 1972). Similarly, the witness cannot challenge the authority of the grand jury on the theory that its investigation does not concern matters within the subject matter jurisdiction of the federal courts. Blair v. United States, 250 U.S. 273 (1919). Therefore, appellant's contentions on these grounds lack merit." 533 F.2d at 730.

In light of these decisions, we have substantial doubt whether Chestnut, albeit the only statement by this circuit, is still controlling. See In re Cueto and Nemikan, supra,^{4/} Slip Op. at 3028-29.

Even if Chestnut is still binding in this circuit, however, the issue is not yet ripe for decision. The witness has not even been sworn, nor is he yet in any present danger of contempt. To permit disruption of the grand jury is surely not warranted until and unless the witness is actually placed in jeopardy by virtue of the government's actions. Moreover, as indicated above, if the government should move to hold the witness in criminal contempt, there is a basis for arguing that he would then

be entitled under the Jury Selection Act, 28 U.S.C. §1867(a) to challenge the grand jury array.

Accordingly, it is concluded that Mr. Archuleta presently lacks standing to challenge the array of the grand jury.

II.

Although Archuleta advances numerous other arguments in support of his motion to quash, all essentially go either to the government's good faith in calling him before the New York grand jury or to the burdensome or unconstitutional effect which would result from requiring his compliance with the subpoena. It is important to consider at the outset the scope and legitimacy of this grand jury investigation.

Between October 26, 1974 and April 9, 1977 there have been nine separate bombing incidents in this district, "credit" for which has been claimed by, or attributed to, the F.A.L.N. There is no question that these events warrant the attention of the United States Attorney's office for this district and of a grand jury. Indeed, each has an obligation to investigate these serious criminal acts, some of which resulted in the loss of human life. Moreover, the possibility that these acts occurred pursuant to a broader conspiracy justifies a grand jury in this district in investigating acts occurring in other districts

insofar as they relate to conspiracy or substantive offense committed here or a conspiracy to commit a substantive offense here. It is thus appropriate and legitimate for grand juries in New York and Chicago to conduct simultaneous and overlapping investigations of F.A.L.N. bombings occurring in their respective districts and to call witnesses in pursuit of these investigations.^{5/}

A.

Archuleta has not been sworn as a witness nor asked any specific questions by the grand jury in this district. Since he has not, there is no claim that the questions asked or information sought tread upon interests protected by the First Amendment. Cf. United States v. Bursey, 466 F.2d 1059, 1086 (9th Cir. 1972). Rather, Archuleta claims he has been 'targeted' for appearance before the grand jury by virtue of constitutionally protected activities and that the subpoena itself must accordingly be quashed. A court will refuse to enforce a subpoena if the grand jury is not pursuing a good faith investigation or is motivated by a desire to harass. United States v. Dionisio, 410 U.S.1, 17 (1972); Branzburg v. Hayes, 408 U.S. 665, 707-08 (1972). However, where a witness refuses even to appear for questioning before the grand jury, a concrete basis for determining whether First Amendment interests are implicated often is/lacking. The threshold showing which must be made

to require a hearing on a motion to quash a subpoena on First Amendment grounds must be substantial, since the grand jury is normally entitled to put its questions to a witness. As Judge Friendly has written in United States v. Doe, 457 F.2d 895, 899 (2d Cir. 1972),

"[While] on occasion a grand jury may overstep the bounds of propriety and ... conduct an investigation so sweeping in scope and indiscriminating in character as to offend other basic constitutional precepts ... [a]part from such cases, when the grand jury has engaged in neither a search nor a seizure there is no justification for a court's imposing even so apparently modest requirement as a showing of 'reasonableness' -- with the delay in the functioning of the grand jury that would inevitably entail."

Archuleta has failed to make such a threshold showing of impropriety in his claim that the subpoena is in retaliation for his political activities in New Mexico which he alleges to be in opposition to the local powers that be. He does not specify a causal connection between those activities and whatever local ire they may have provoked and the issuance of a subpoena by a federal grand jury in the Southern District of New York. Although affidavits from Archuleta and other persons with whom he works and associates in New Mexico establish a good faith basis for their belief that local officials are harassing them unlawfully for political

reasons, even if such a pattern existed in New Mexico, it would not affect the legitimacy of this grand jury's need for his testimony. Neither these affidavits nor the "offer of proof" that Archuleta is a victim of a national "COINTELPRO" operation requires a hearing in light of the government's open affidavits ^{6/} and findings of the legitimacy of this grand jury investigation by us and by other courts.

The open affidavit states that one significant basis for issuing the subpoena to Archuleta is his past membership in the National Hispanic Commission. Archuleta argues that this is an improper basis for issuance of a grand jury subpoena.

In considering a related claim raised by two other witnesses subpoenaed by the same grand jury, Judge Pierce held that where a person's associational activities form the basis for issuance of a subpoena, the government must show a "meaningful relationship" between the association and the legitimate inquiries of the grand jury in order to protect the proposed witness from the possible chill of his First Amendment rights. In re Grand Jury Subpoena of Bishop Wood, et al., ___ F.Supp. ___ (S.D.N.Y. 1977). Judge Pierce found that the instant grand jury was conducting a careful, proper and limited inquiry into the bombings and that the government had demonstrated the

requisite meaningful relationship between the Hispanic Commission and the subject matter of the grand jury investigation.

The open affidavit submitted by the government on this motion leads us to concur with Judge Pierce's findings. One member or former member of the Hispanic Commission, Carlos Torres, has been charged with serious criminal activity in connection with the bombings and is a fugitive. According to the government's brief submitted on the appeal from Judge Frankel's order, material from the National Hispanic Commission was found in the "bomb factory" in Chicago believed to be Torres' apartment. Members of the Commission may reasonably be thought to have knowledge -- which may, of course, be perfectly innocent -- as to another member's whereabouts and his criminal activity.

In calling a witness to testify, a grand jury makes no accusation which must be supported by probable cause; nor does it subject the witness to public obloquy particularly since grand jury proceedings are conducted in secret. Cf. N.A.A.C.P. v. Alabama, 357 U.S. 449 (1958). The First Amendment does not stand as a bar to the grand jury's calling members of an organization one of whose members has been charged with serious criminal activity to determine whether their association with him

has produced any knowledge relevant to the investigation of criminal conduct.^{7/} No intent to harass in violation of the First Amendment can be inferred from such a procedure, since it is not the nature of the organization's purpose or interest which prompts the inquiry, but merely the possibility that persons who associate with each other may have knowledge about one another, which is relevant to the inquiry. We conclude therefore that no evidentiary hearing on this claim is required.

B.

Nor is a hearing required on the claim that the grand jury is improperly searching for fugitives on behalf of the executive branch. We assume as true the facts set forth in the Movant's affidavit, namely, that on Achuleta's refusing to talk with F.B.I. agents investigating F.A.L.N. activities in New Mexico, the agents "threatened" him with being brought before the grand jury. However, as indicated above, being called to testify before the grand jury is neither a punishment nor a disgrace; and appearance is a duty, of course frequently an inconvenient one, which citizens must perform.

A grand jury may use its subpoena power to call witnesses to aid in finding other witnesses whose whereabouts are unknown and whom the grand jury believes it should hear. As Judge Pierce held, in response to a

witness' claim that "the use of the grand jury to seek to locate possible fugitives from justice constitutes an abuse of the grand jury power:" "the grand jury may properly be employed to locate other prospective witnesses, even when those persons may be fugitives from justice." In re Wood Subpoena, supra, slip op. at 14. We recognize, as did Judge Pierce, that there may be circumstances in which the power may be abused, for example, where a grand jury subpoena is issued for the purpose of permitting a prosecutor or government agent to have conversations with a witness without the protection of the grand jury's secrecy and independence, United States v. Durbin, 221 F.2d 520, 524 (D.C. Cir. 1954), or where the subpoena is issued solely for purposes of discovering the whereabouts of a fugitive in whose testimony the grand jury itself has no interest. If the facts alleged supported the claim that either of these situations existed, a hearing would be appropriate. However, it cannot reasonably be claimed that this grand jury has no interest in calling Torres as a witness and accordingly, in discovering his whereabouts.

C.

Archuleta claims for various reasons, that execution of the New York subpoena should be barred -- either permanently or temporarily -- because of the ongoing grand jury proceedings in Chicago. Although a wise

national policy might caution against calling witnesses across the country to different grand juries investigating similar or related acts at the same time, a court cannot create such policies by judicial fiat but may only consider whether Archuleta's rights are invaded or the grand jury process abused. On a careful consideration of the arguments presented, we conclude that the subpoena was properly issued by the New York grand jury and that the pendency of the Chicago proceedings does not require the government to make a special showing of need in support of the New York subpoena beyond the showing it would ordinarily be required to make to justify its subpoena. This it has done.

Archuleta's claims that the New York subpoena is designed to "circumvent" the Chicago proceedings, prevent him from litigating his claims in Chicago, and represents impermissible "forum shopping" by the government are not persuasive. Once it has been determined that the New York grand jury is entitled for its own legitimate purposes to call Archuleta, it cannot be said that the Chicago grand jury or court has been "circumvented" by the New York subpoena, even if Archuleta "wins" in Chicago. Nor has movant established that the New York subpoena will 'prevent' litigation of his rights in Chicago. He has been ably served in these proceedings by a battery of counsel

from across the country. Government counsel advises us that Archuleta's expenses of flying to New York for purposes of this proceeding are paid for by the government.^{8/} The litigation here does not require Archuleta's continued presence, and there is thus no basis for concluding that these proceedings will interfere with his ability to protect his rights in Chicago.

Two additional arguments are made: that the New York subpoena is burdensome and oppressive because the grand juries in both New York and Chicago are investigating essentially the same set of incidents and are seeking identical information from the witness; and that since Archuleta has "publicly announced" his refusal to testify in Chicago calling him to New York is an impermissible attempt to punish him.

Assuming for purposes of the motion that both grand juries seek Archuleta's appearance for similar, if not identical purposes, the question is whether two federal grand juries in different districts may issue closely successive subpoenas to a single witness for purposes of obtaining similar information relevant to separate investigations which are legitimate in each district. The answer to the question is affirmative. Cf. In re Pilliteri, 420 F.Supp. 913 (W.D.Pa. 1976). While in ordinary civil litigation it is the rule that "the

federal court first seized of an action should be the one to adjudicate it," Commerce & Indus. Ins. Co. v. Cable-wave, Ltd., 412 F.Supp. 204, 207 (S.D.N.Y. 1976), grand juries perform distinctive functions. Applying the "first-forum" rule to grand jury proceedings could seriously impair their ability speedily to investigate criminal activity occurring within their districts. Even more important, is the proposition that while the two grand juries may be seeking similar information from the witness, the issues being litigated in Chicago are not identical to those raised here; disposition of the challenge to the Chicago grand jury or to illegal wiretapping there would have no dispositive effect on similar claims raised in the separate factual context of this district.

While it is of course true that it is the responsibility of courts to supervise grand juries to prevent abuse of their powers, In re Grand Jury Proceedings, 486 F.2d 85 (3d Cir. 1973),

Archuleta has not made a showing of abuse. In re National Window Glass Workers, 287 F. 219 (N.D. Ohio, 1922), on which Archuleta relies, is inapposite. The major purpose of the second grand jury there was to gather evidence in support of an existing indictment in another federal district in which trial was imminent; no trial in the second district was contemplated unless

the first indictment was dismissed; and the same Assistant United States Attorney was handling both investigations. It is manifestly improper to utilize a grand jury to procure evidence to be used in support of a previously existing indictment. United States v. Dardi, 330 F.2d 310 (2d Cir. 1964); United States v. Fisher, 455 F.2d 1101, 1104-05 (2d Cir. 1972). Here, however, no indictment against Archuleta has been procured in either district; each grand jury has a legitimate interest in investigating substantive offenses occurring within the district, see In re Grand Jury Investigation (G. M. Corp.), 32 F.R.D. 175 (S.D.N.Y. 1963); ^{and} the subpoena has not been served on a defendant short weeks before his criminal trial.

We do ^{not} denigrate the practical inconvenience to Archuleta of having to respond to the New York subpoena. New York and Chicago are each a long way from the witness' home and from each other. The subpoena is certainly 'burdensome' in the ordinary sense of the word, as are many subpoenas. But the grand jury is entitled to inconvenience citizens where necessary, as here, for purposes of acquiring information relevant to its legitimate inquiries. ^{9/} The only burden to which the witness has pointed is that of coming to New York from New Mexico to testify for a day or two. This is a reasonable burden and one which any witness must bear.

This is not to suggest that under no circumstances may a subpoena be quashed on grounds of burdensomeness arising out of subpoenas, issued by various federal grand juries investigating related criminal activity. At some point such successive or contemporaneous subpoenas might well become abusive in their cumulative impact; but that point has not arrived in this litigation.

With respect to the witness' final contention, the law does not require the grand jury to accept a witness' 'public announcement' that he will not testify. See United States v. Messitte, 324 F.Supp. 334 (S.D.N.Y. 1971). A grand jury with a legitimate interest in hearing from a particular witness may call him, and put him to the test of whether he will testify, assert his rights under the Fifth Amendment, if it applies, or refuse to testify. It is not unreasonable to act on the proposition that persons faced with the actuality of the choice, and possible concomitant penalties may decide to testify. Archuleta has not been held in contempt or sanctioned in Chicago, and accordingly we need not address the question that might be presented if he had already been held in contempt.^{10/} Cf. In re Certain Proceedings Before the 1959 Grand Jury, 212 F.2d 823 (N.D.Ill. 1963); In re Pilliteri, 420 F.Supp. 913 (W.D.Pa. 1976). No basis exists for barring this grand jury from attempting to obtain Archuleta's testimony as the

case now stands.

III.

Archuleta raises two final points concerning the government's conduct -- and misconduct -- in the course of the investigation which warrant some judicial response. On Sunday, April 17, 1977, the New York Times published a front page story on the federal investigation of the F.A.L.N. bombings based in part on information attributed to confidential law enforcement sources. Although much of the information in the article had at the time become a matter of public record, among the previously nonpublic items revealed was the report that Archuleta had allegedly been named in a "confidential law enforcement memo" as a "prime suspect" in the theft of dynamite from Heron Dam in New Mexico which was believed to have turned up in F.A.L.N. bombs that failed to explode, and an inaccurate report that Archuleta had been asked to provide voice samples to the Chicago grand jury for comparison with tapes of voices making phone calls to announce that bombs had been planted. ^{11/}

Release of such information is obviously injurious to Archuleta's reputation and standing in the community. Affidavits have been submitted to support his claim that the medical and community centers for which he works will suffer loss of funds and volunteer

time as a result of these disclosures. The possibility that federal law enforcement officials were responsible for the "leak" is a matter of grave concern, since such disclosures might be a betrayal of the grand jury's historic role as a shield for innocent citizens from unwarranted charges of wrongdoing. See In re Biaggi, 478 F.2d 489, 491-92 (2d Cir. 1973); Pittsburgh Plate Glass Co. v. United States, 360 U.S. 395, 399 (1959).

The principle of grand jury secrecy is reflected in Rule 6(e) of the Federal Rules of Criminal Procedure, which provides that:

"Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the government for use in the performance of their duties. Otherwise, a juror, attorney, interpreter, stenographer, operator of a recording device or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminarily to or in connection with a judicial proceeding or when permitted by the court at the request of a defendant [on a motion to dismiss the indictment]."

The Court of Appeals of this Circuit has held that the disclosure permitted to United States Attorneys "refers to their need for the minutes in the preparation of criminal, or sometimes, civil cases; it does not confer a license to broadcast a transcript of grand jury proceedings to

the world ...". In re Biaggi, supra, at 491-92.^{12/}

Moreover, the Department of Justice has promulgated regulations prohibiting certain disclosures of evidence in pending criminal investigations, regardless of whether the information has been presented to a grand jury. The guidelines apply to all Justice Department personnel, and would therefore include not only members of the United States Attorney's office but also members of the F.B.I. Since Archuleta has been named as a "suspect" in the Chicago grand jury investigation, the Justice Department guidelines by their terms apply to his case. 28 C.F.R. §50.2(b). The guidelines specifically provide that:

"(6) The release of certain types of information generally tends to create dangers of prejudice without serving a significant law enforcement function. Therefore, personnel of the Department should refrain from making available the following:

(i) Observations about a defendant's character.

(ii) Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement.

(iii) Reference to investigative procedures such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations.

(iv) Statements concerning the

identity, testimony, or credibility of prospective witnesses.

(v) Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial.

(vi) Any opinion as to the accused's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea to a lesser offense." 28 C.F.R. §50.2(b)(6).

The information concerning Archuleta disclosed in the New York Times article is within the prohibitions of subparagraphs (ii), (iii) and (v), supra.

Shameful as is the publication of such material, however, we cannot agree that the appropriate remedy on the present facts is to quash the subpoena. There is no evidence that the New York investigation was the source of the story. The United States Attorney's office for the Southern District of New York has represented that

"no matter occurring before the grand jury and no information obtained in the grand jury investigation in New York was disclosed by anyone working in connection with the grand jury's office, either at the United States Attorney's office or at the Federal Bureau of Investigation." (Supplemental Affidavit of Thomas E. Engel, filed April 26, 1977)

To prevent the grand jury from acquiring knowledge from this witness relevant to its legitimate investigation into serious crimes because some law enforcement officer somewhere in the country may have committed a breach of

law or ethics would neither retrieve the injury to Archuleta's reputation nor sanction the appropriate governmental employee or unit. Cf. United States v. Capra, 372 F. Supp. 609 (S.D.N.Y. 1974). The remedy for improper disclosure of grand jury evidence is to punish the offending party in a contempt proceeding. United States v. Schavio, 375 F.Supp. 475 (E.D.Pa. 1974); United States v. Smyth, 104 F.Supp. 283, 293 (N.D.Cal. 1952).

The breach of law which may have occurred is sufficiently grave, however, that it would be insufficient for the court to rest on mere exhortations and condemnatory words: "the mere gnashing of judicial teeth should not remain the sole response to such law enforcement behavior." United States v. Capra, supra, 372 F.Supp. at 615. The government is, perhaps understandably, unable to represent that no federal law enforcement official or grand juror in the country was responsible for the leakage. At oral argument, Assistant United States Attorney Engel conceded that "the government is not in a position to deny that some of that information may have come from federal sources somewhere in the United States." (Tr. at 26)

Breaches of grand jury secrecy have been occurring with disturbing frequency; Attorney General Bell has recently ordered an internal investigation into the source of a news story concerning secret deliberations of another federal grand jury in the Southern District of New York. See "Carter Defends Continuing Investigation and Possible Prosecution of F.B.I. Agents," New York

Times, Fri., May 13, 1977, at A 13. Until an investigation is conducted into the sources of this publication, sanctions cannot be imposed. A national level inquiry is required since grand juries and federal law enforcement personnel in more than one federal district are investigating the F.A.L.N. bombings. Accordingly, we request the Attorney General to conduct an internal investigation of whether there was a federal source for the disclosure and if so, who it was. The United States Attorney for the Southern District of New York, over whom this court has jurisdiction, is directed to conduct an investigation into any federal sources of improper disclosure concerning the F.A.L.N. investigation in the Southern District of New York and to report to the court within thirty days on the progress of this investigation. In re Biaggi, supra, 478 F.2d 489, 490 n.1.

Archuleta's final claim is that if he should assert his Fifth Amendment privilege and is granted use immunity, such immunity will insufficiently protect him from possible impermissible use of his immunized testimony by the United States Attorney's office for the Northern District of Illinois, where he is already for all practical purposes a target of the grand jury. The short answer to this contention is that it is premature: Archuleta has not yet been sworn, and thus has not yet been

asked any questions. He may find that he is not asked to answer any incriminating questions; he may assert his Fifth Amendment privilege, and the government may decide not to seek to compel his testimony through the grant of use immunity.

Moreover, should Archuleta testify under a grant of use immunity, his rights can be adequately protected by the requirement in any subsequent prosecution that the government demonstrate that no part of its case was derived, directly or indirectly, from the immunized testimony and that it has a wholly independent source for its case. Kastigar v. United States, 406 U.S. 441 (1972). Despite the availability of these protections, however, should Archuleta testify, the United States Attorney's office for this District would be well advised not to share his testimony, directly or indirectly, with any other prosecutor's office, in order to insure that the immunized testimony is not used "in focusing the investigation, deciding to initiate prosecution, refusing to plea bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy." United States v. McDaniel, 482 F.2d 305, 3 (8th Cir. 1973). See United States v. Hinton, 543 F.2d 1002 (2d Cir. 1976).

For the reasons stated Archuleta's motion to quash

the subpoena on the grounds discussed above is denied. The United States Attorney is ordered to report to the court within thirty days or such additional time as the court may then allow, on good cause shown, as to the source of leakage of confidential information to the New York Times in violation of Justice Department guidelines.

IV.

The motions to intervene, described above at pp. 4-5, are denied. None of the parties seeking to intervene, with the possible exception of Archuleta's immediate employers, are arguably entitled to intervene as of right under Rule 24 of the Federal Rules of Civil Procedure (assuming the rule to be applicable at all to grand jury proceedings); and we conclude that the relationship between the interests asserted here by Archuleta and those of his employers, while not inconsequential, are not so direct and immediate as to require their being permitted to intervene. Comp. Application of Caldwell, 311 F.Supp. 358 (N.D.Cal.), rev'd on other grounds, 434 F.2d 1081 (9th Cir. 1970), rev'd sub nom. Branzburg v. Hayes, 408 U.S. 665 (1972); United States v. Doe, 332 F. Supp. 930 (D.Mass. 1971), aff'd 455 F.2d 753 (1st Cir.), vacated and remanded on other grounds sub nom., Gravel v. United States, 408 U.S. 606 (1972).

The remaining proposed intervenors essentially claim a professional or personal interest generally in seeing grand jury abuses curbed, and allege a "chilling" effect on their First Amendment rights if this subpoena is enforced. These interests are not sufficiently concrete to warrant permissive intervention, in light of (a) the highly competent and vigorous representation of those interests already being provided by counsel for the witness, and (b) the disruptive potential which permitting intervention would have on the orderly resolution of the proceedings.

All motions are denied in accordance with this opinion. This opinion does not deal with Archuleta's motion to quash the subpoena on grounds of illegal wiretapping.

It is so ordered.

Dated: New York, New York
May 27, 1977.

MORRIS E. LASKER

U.S.D.J.

FOOTNOTES

1. The District Plan provides for disclosure under the same circumstances, and no others, specified in the statute.
2. The 7th Circuit Court in Chicago has permitted Archuleta to file a similar challenge to the grand jury composition. It is not clear, however, whether the government there even raised the question of his standing to do so.
3. Recent cases in other circuits cast some doubt on whether a literal reading of Blair is entirely appropriate. See In re Grand Jury Proceedings (Schofield I), 486 F.2d 86 (3d Cir. 1973); In re Grand Jury Proceedings (Schofield II), 507 F.2d 963 (3d Cir. 1975); Korman v. United States, 486 F.2d 926 (7th Cir. 1973); Matter of the Grand Jury, 529 F.2d 543 (3d Cir. 1976).
4. The Court of Appeals there wrote,

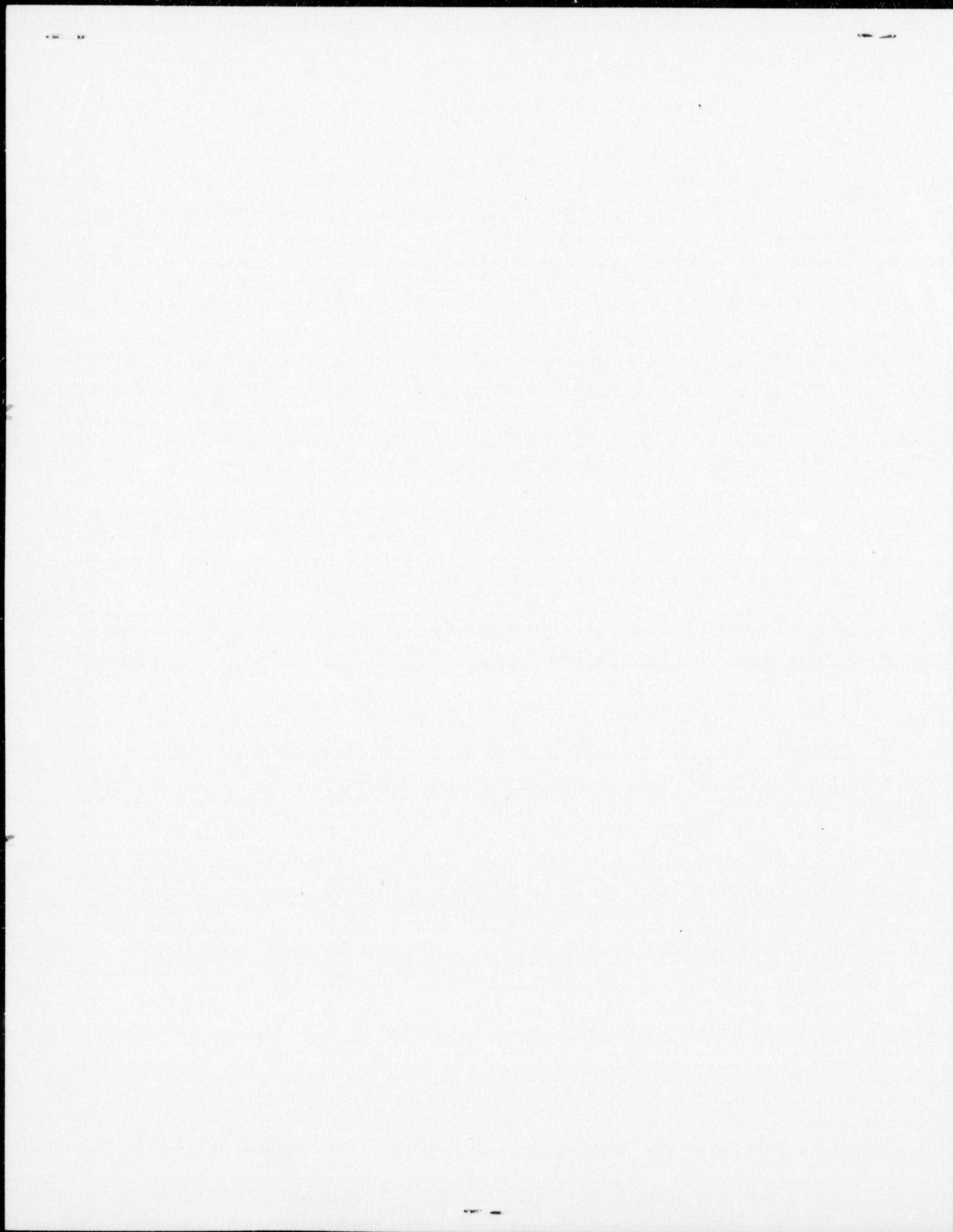
"It is a fundamental rule of law that the public has a right to every person's evidence. There are a small number of constitutional, common-law and statutory exceptions to the general rule, but they have been neither 'lightly created nor expansively construed, for they are in derogation of the search for truth.' United States v. Nixon, 418 U.S. 683, 710 (1974)"
5. It appears that the New York grand jury is investigating not only the bombings occurring in New York but also bombings occurring in other parts of the country believed to be related to the New York bombings. See "open" Affidavit of Thomas Engel, ¶¶4, 5.
6. In his supplemental affidavit filed April 26, 1977, Assistant United States Attorney Engel represented that

"the grand jury investigation in this case in no way concerns the so-called COINTELPRO activities, or the asserted purposes of those activities, complained of in the unsworn statements in the Offer of Proof. The investigation has a very simple and limited purpose: to identify the individuals

responsible for the New York bombings
for which the FALN has claimed credit."

7. The "chill" on First Amendment rights described in affidavits submitted by Constancia Valdez and Henrietta Esquibel is not one from which the law provides protection. Affiants state that they have been discouraged from attending political meetings in New Mexico because of a fear that they will be called to New York to testify. Since the New York investigation is proper, and since citizens owe a duty to respond to a proper subpoena, however, the risk that by participating in political activities one will acquire knowledge of criminal behavior which knowledge the government may attempt to obtain in grand jury proceedings is one that must be borne, at least absent a showing of some connection between mere attendance at the New Mexico meetings and Archuleta's summons to New York.
8. Archuleta and his wife, by affidavits, state that compliance with the New York subpoena will prevent Archuleta from, inter alia, performing important duties as an ambulance driver in New Mexico, and properly caring for his family and their home. We cannot understand how appearing to testify for a few days could have so disruptive an effect.
9. Indeed, the subpoena itself commands that the witness lay aside "all and singular business and excuses."
10. Should Archuleta at some point be held in contempt in Chicago one might reasonably question the government's purpose in subpoenaing him to New York to testify on the same subjects. In such an event it might be appropriate to consider any penalty imposed in Chicago in connection with the imposition of any penalty for an identical refusal to testify in New York.
11. In fact, Archuleta's counsel advised the court that he was asked for fingerprints and photographs of himself, but was not asked for voice exemplars.
12. In supplemental papers of May 13, 1977 Archuleta argues that the government, by filing with the court three pages of the grand jury minutes in Chicago (in which Archuleta was warned by the Assistant United States Attorney that he was a "suspect" in their investigation, that he had a right not to incriminate himself and to consult his attorney outside the grand jury room at any time), made an improper disclosure forbidden by Rule 6(e) which war-

rants, either in itself or in conjunction with other events, quashing the subpoena. Although the government should have applied for permission from the District Court in Chicago prior to submitting the testimony in this proceeding, the testimony was submitted on a point raised by Archuleta himself concerning what he had been told in the Chicago grand jury, and therefore he was not damaged by the submission.



APPELLANT'S EAVESDROPPING AFFIDAVITS

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
In the Matter of the Grand Jury Subpoena :
Served Upon: :

M 11-188

PEDRO ARCHULETA :
-----X

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

DORIS PETERSON, being duly sworn, deposes and says:

1. I am an attorney admitted to the bar of this Court and make this affidavit in support of Pedro Archuleta's motion on electronic surveillance.
2. I am a staff attorney at the Center for Constitutional Rights (hereinafter CCR).
3. On April 16, 1977, I flew to Albuquerque, New Mexico, to consult with Mr. Archuleta in connection with his grand jury case. When I arrived in Albuquerque, on April 15, 1977, I rented a car and traveled in it with Jose A. Lugo, another CCR staff attorney to see our client at his home in Tierra Amarilla, New Mexico.
4. As we were late for our appointment, we stopped at a roadside telephone on the outskirts of Sante Fe, New Mexico, to telephone Mr. Archuleta to tell him that we would be late.
5. I called Mr. Archuleta at La Cooperacion where he works, area code (505) 588-7601 and charged the number to my CCR credit card.
6. I heard men's voices talking and heard someone say, "Pedro has left" before I even said "hello."

7. I kept saying, "hello," "hello," "hello."

8. There was no answer and when it became clear that no one had answered the phone, I got the operator, explained my difficulty and was connected with La Cooperacion.

9. A woman answered La Cooperacion's telephone and told me that Mr. Archuleta had gone home and would wait there for us.

10. I made this call from a telephone in area code 505. The number on the telephone was 983.9820.

11. The strange happenings described above where I could hear the voices of men talking lead me to believe that electronic surveillance was being conducted in connection with La Cooperacion telephone.

Doris Peterson

DORIS PETERSON

Sworn to before me this
day of May, 1977

Joan R. Washington
NOTARY PUBLIC

JOAN R. WASHINGTON
Notary Public
New York County
Commission Expires March 30, 1979

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

In the Matter of the
Grand Jury Subpoenas of

No. 76 GJ 1128

MOISES MORALES and
PEDRO ARCHULETA

AFFIDAVIT

STATE OF NEW MEXICO)
) ss.
COUNTY OF RIO ARRIBA)

PEDRO ARCHULETA, being first duly sworn, deposes and says:

1. I incorporate herein as if fully set forth my affidavit filed in the above matter and attached to my motion for disclosure of electronic or other surveillance.

2. Approximately during the summer of 1976 I entered into a business transaction with a man from Antonito, Colorado.

3. He gave me the telephone number (303) 852-2275 where I could reach him. I understood that this telephone number was the number of the parents of a friend of his.

4. I subsequently found out that this number belonged to Mary Josephine Lujan who resides at 5298 West Road 5 North, Del Norte, Colorado.

5. Approximately during the month of October, 1976 I made three telephone calls to (303) 852-2275, and on at least one of these occasions I spoke with Mary Josephine Lujan, the person who has filed her affidavit herein.

6. Approximately during the month of January or February,

1977 I was informed that the F.B.I. had questioned Mary Josephine Lujan, an affiant herein, regarding phone calls that I had made to her telephone number and I later found out that they had shown Mary Josephine Lujan a photograph of mine.

7. I had not spoken to any other person concerning my phone calls to (303) 852-2275 prior to November, 1976 and I believe that the F.B.I. could have only obtained such information by the use of illegal electronic surveillance.

8. Because of the foregoing and because of the information contained in my first affidavit incorporated herein, I believe that my telephone calls have been tapped over the past year and one-half.

9. In addition to the telephones listed in my initial affidavit on which I may have been illegally tapped, or where conversations related to me or my appearance before the grand jury, or where my attorneys have consulted with me or other people concerning me, I list the following: (303) 852-2275-Mary J. Lujan.

STATE OF NEW MEXICO)
) SS
COUNTY OF RIO ARRIBA)

Pedro Antonio Archuleta III, being first duly sworn on oath, deposes and says: That Affiant has read over, knows and understands the contents of the foregoing affidavit, and that the statements therein made are true; except such as are made upon information and belief, and, as to those, Affiant believes them to be true.

Pedro Antonio Archuleta III

SUBSCRIBED and SWORN TO before me this 5th day of March, 1977.

Wm. C. [Signature]
Notary Public

My Commission Expires:

April 5, 1978

AFFIDAVIT OF
MARY JOSEPHINE LUJAN

I, MARY JOSEPHINE LUJAN, being first duly sworn state
as follows:

1. I reside at 5298 West Road 5 North, Del Norte, Colorado.
2. I am a teacher at the Blue Peaks Learning Center where I teach handicapped children.
3. Approximately in early November, 1976, a Mr. Fleming who identified himself as a member of the FBI came to my classroom and rudely interrupted my class. He demanded that I speak with him immediately although I was very busy trying to line up the children, all of whom have learning disabilities and are emotionally disturbed.
4. This man asked me my name, address and phone number which I gave to him. My telephone number is (303) 852- 2275.
5. He then asked me if I knew a Pedro Archuleta and whether I had ever spoken to him by telephone. I said I did not know. I added that Pedro is not a common name and that I thought that I would remember that name.
6. At this point Mr. Fleming showed me a card with many telephone numbers on it including mine and indicated that the FBI was interested in Pedro Archuleta in connection with some all bombings and dynamite.
7. He then asked if it would help me remember if he told me that the calls were out of state calls, specifically to or from New Mexico. I replied that I still did not remember any calls or conversations with a Pedro Archuleta. At this point I was shown a picture of a man I did not recognize and I was told this picture was of Pedro Archuleta.
8. I explained to the FBI agent that I am involved in many workshops, in-service training programs and am consulted with regard to counseling and diagnostic programs for particular individuals and therefore I receive many phone calls at my home from people I do not know and that it would be impossible for me to remember every call.

9. Several times during this conversation I was asked if I know my rights and asked if I was telling the truth.

10. At the end of the conversation Mr. Fleming handed me his card and told me that if I was ever contacted by Pedro Archuleta I should contact Mr. Fleming at his office in Durango.

11. That I have read the above and to the best of my recollection it is the truth.

Mary Josephine Lujan

Subscribed and sworn to before me this 1st day of March, 1977.

MY COMMISSION EXPIRES
SEPT. 4, 1973

[Signature]

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

In the matter of the
Grand Jury Subpoenas of

MOISES MORALES and
PEDRO ARCHULETA

No. 76 GJ 1128

AFFIDAVIT

STATE OF NEW MEXICO)
COUNTY OF SANTA FE)

PEDRO ARCHULETA, being first duly sworn, deposes and says:

1. On November 23, 1976 I was served with a subpoena ordering me to testify before a grand jury in Chicago, Illinois on December 1, 1976. My attorney, Joan Friedland, obtained a continuance of that appearance, since I was under subpoena to testify in the criminal trial of Moises Morales in Santa Fe County District Court, and that trial began November 29, 1976. When the trial was finished, a new date was set for me to appear, on December 15, 1976. Following the denial of my motion for a continuance of that appearance and my motion to quash the subpoena, I was taken to the grand jury. During my appearance there on December 15, I was handed another subpoena, attached hereto, ordering me to provide fingerprints, a photograph, and palmprints.

2. I feel that both subpoenas served on me are invalid because of gross abuse by the government and perversion of the grand jury process.

recent arrest was on federal charges in November or December, 1975. On the occasions I was arrested, my fingerprints, palm-prints and photograph were taken, including the time I was arrested on federal charges. I believe those records are in the possession of the FBI and therefore are readily available to the U.S. attorney's office and the grand jury.

4. I live in La Puente, New Mexico and am employed as the project coordinator for La Clinica del Pueblo and La Cooperacion, which are, respectively, a medical clinic and community service corporation in Tierra Amarilla, New Mexico. I have worked with these organizations since 1970. These organizations provide basic services to people in the Tierra Amarilla area. In the past year and one-half they, along with other community organizations, have been vocally opposed to the activities of law enforcement officials in northern New Mexico and to the economic and political control which certain public officials have over employment and other aspects of people's lives in that part of the state. In response to such opposition, law enforcement officials on all levels have carried out a campaign of harassment and intimidation. For example, the Rio Arriba County sheriff's department carried out a massive search of La Clinica and La Cooperacion premises in November, 1975. Included in the illegal search were the offices of La Oficina de Ley, the law offices for the organizations. Also, my home was illegally searched as well as the homes of people associated with the organizations, and people associated with land reform activities in New Mexico.

In addition, the District Attorney's office for the area including Rio Arriba County has carried out an investigation of the non-profit status and funding of La Clinica and La Cooperacion and has recently indicated an intent to continue such investigation. Also, the FBI has been investigating these organizations recently, as well as people connected with the organizations.

5. As a result of the search of my home described above, I was arrested and charged in federal court. The charges against me were dismissed by a federal judge in Albuquerque. The FBI has contacted me on several occasions to question me concerning my political activities. Also, the FBI has made inquiries of several people concerning telephone calls from my home phone. On the last occasion the FBI questioned me, I was told that if I answered questions, I would not have to go to the grand jury in Chicago. When I said I did not want to talk to them, I was immediately served with a subpoena to Chicago.

6. I have reason to believe that my telephone calls have been tapped over the past year and one-half, and that telephone calls of my attorneys when they have been representing me and calls involving organizations I work with have been tapped during that period. I believe this because I have heard strange sounds on the telephone during this period and also an echoing sound, and my attorneys and other people have made the same complaint to me.

7. The telephones on which I may have been illegally tapped, or where conversations related to me or my appearance

before the grand jury, or where my attorneys have consulted with me or other people concerning me are the following:

(505)	588-7316	Pedro Archuleta
"	588-7454	Pedro Antonio Archuleta, Sr.
"	588-7681	Nick Lopez
"	588-7252 &	La Clinica del Pueblo
	588-7253	
"	588-7601	La Cooperacion
"	588-7258	Derechos de Familia
"	588-7464	Richard Rosenstock, Esq.
"	766-5440 &	
	243-3585	Charlie Driscoll, Esq.
"	982-4679,	Joan Friedland, Esq.
	982-4670,	
	988-3671 &	
	982-9642	
"	988-2934	Morton Simon, Esq.
"	776-2493	Craig Vincent
(312)	278-6706,	
	248-7686, &	
	236-3504	Michael Deutsch, Esq.
(415)	824-9186	Susan Jordan, Esq.

8. I believe that the tapping of my phone and any of the above telephones was illegal.

Pedro Antonio Archuleta III
PEDRO ANTONIO ARCHULETA III

SUBSCRIBED AND SWORN to before me this 21st day of
December, 1976.

C. B. Lopez
NOTARY PUBLIC

My Commission Expires:

Aug 8, 1977

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

In the Matter of the
Grand Jury Subpoenas of

No. 76. GJ 1128

MOISES MORALES and PEDRO ARCHULETA

A F F I D A V I T

STATE OF NEW MEXICO)
)
COUNTY OF SANTA FE)

MOISES MORALES, being first duly sworn, deposes and
says:

1: On November 23, 1976 I was served with a subpoena ordering me to testify before a grand jury in Chicago, Illinois on December 1, 1976. My attorney, Joan Friedland, obtained a continuance of such matter, sinche I was scheduled to go to trial in a criminal matter in Santa Fe County beginning November 29, 1976. When my trial was finished, a new date was set for me to appear on December 15, 1976. Following the denial of my motion for a continuance and motion to quash, I appeared before the grand jury. When I was before the grand jury I was handed another subpoena, attached hereto, ordering me to provide fingerprints, photographs and palmprints.

2. I feel that both subpoenas served on me are invalid because of gross abuse by the government and perversion of the grand jury process.

3. I have been arrested a number of times since 1968. My most recent arrest was by the Rio Arriba County Sheriff's Department in New Mexico in November, 1975. On those occasions that I was arrested the law enforcement agency arresting me took my fingerprints, photograph and palmprints. I believe that these records are in the possession of the F.B.I. and therefore already available to the U.S. Attorneys office and the grand jury.

4. I live in Canjilon, New Mexico and am self-employed as a mechanic. I lease my shop from La Clinica del Pueblo, a medical clinic in Tierra Amarilla, New Mexico. This clinic and a community service corporation (La Cooperacion) associated with it, have been engaged in providing basic services to people in the Tierra Amarilla area. In the past two years they, along with other community organizations, have been vocally opposed to the actions of law enforcement officials in northern New Mexico and to the economic controls which certain political figures have over employment and other aspects of people's lives in that part of the state. In response to such activities law enforcement officials have done the following the Rio Arriba County sheriff's department carried out a massive search of La Clinica and La Cooperacion premises in 1975. Included in the search were the offices of La Oficina de Ley where my former attorney, Richard Rosenstock, works. Also, the homes of individuals

associated with La Clinica and La Cooperacion were searched, as well as the home of persons associated with a group seeking land reform in New Mexico. In addition, the District Attorney's office for the area including Rio Arriba County has carried out investigations of the non-profit status of those organizations and has recently indicated an intent to continue the investigation. Also, the F.B.I. has conducted a clandestine investigation of those organizations recently, as well as of individuals connected with the organizations. Because of my work on the premises of those organizations, because we have cooperated in political activities and because I was represented by Richard Rosenstock of La Oficina de Ley, I am closely associated with those organizations and their activities.

5. I have also been attacked by law enforcement agencies because of my political activities. In September, 1975 I declared my candidacy for the position of sheriff of Rio Arriba County. After that time I was arrested by the sheriff for possession of marijuana. I maintained that the marijuana was planted in my truck by the sheriff's department and was acquitted of such charges. I have also been questioned by F.B.I. agents in Rio Arriba County recently and was called to testify before a federal grand jury in Albuquerque, New Mexico in approximately July, 1976. On the last occasion that the F.B.I. questioned me, I was told that if I would answer questions concerning dynamite taken from Heron Dam in 1968, I would not have to go to Chicago to testify. When I told them I did not know anything about any dynamite, I was immediately served with a subpoena.

6. I have reason to believe that my telephone calls have been tapped over the past year and one half, and that telephone conversations of my attorneys or as to other matters related to me and the organizations I work with have been tapped during that period. I believe this because I have heard strange clicks and echoing sounds on phones I have used, and my attorneys and other persons have made the same complaints.

7. The telephones on which I may have been illegally tapped or where my attorneys have consulted with other persons concerning me are the following:

(505)	684-2267	Moises Morales
"	588-7257	Oficina de Ley
"	588-7464	Richard Rosenstock
"	588-7252 & 588-7253	La Clinica del Pueblo
"	588-7601	La Cooperacion
"	638-5469	Antonio deVargas
"	982-4679 & 982-9642	Joan Friedland
"	982-4679 & 988-2934	Morton S. Simon
"	827-5477	Public Defender's Office
"	988-1005	Robert Rothstein
"	588-7253	Anselmo Tijerina
"	588-7258	Derechos de Familia
"	588-7678	Andres Valdez
(312)	236-3504	Michael Deutsch

8. I beleive that any tapping of my phone was illegal.

Moises Morales
MOISES MORALES

SUBSCRIBED AND SWORN to before me this 21st day of
December, 1976.

C. B. Lopez
NOTARY PUBLIC

My commission expires:

Aug 8, 1977

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

In the Matter of the
Grand Jury Subpoenas of

MOISES MORALES and
PEDRO ARCHULETA

76 GJ 1128

AFFIDAVIT

STATE OF NEW MEXICO)
COUNTY OF SANTA FE)

JOAN FRIEDLAND, being first sworn on her oath, deposes
and says:

1. I am one of the attorneys for Moises Morales and Pedro Archuleta, the movants herein. I have represented them since November 23, 1976 in connection with their being subpoenaed to the grand jury in Chicago, and am currently still representing them.

2. In the course of representing movants, I have spoken on the telephone with movants, attorneys, legal workers and other people. All of these conversations dealt with preparation for representing movants before the grand jury.

3. I have reason to believe that my telephone conversations connected with representing movants since November 23, 1976 have been monitored and intercepted. My belief that such telephone calls have been monitored or otherwise electronically intercepted is based on strange clicks and beeps which I heard during those calls, whether I used my home or office

telephone. Also, there is often a hollow, echoing sound from my telephones, and this seems to have worsened during the time since November 23, 1976.

4. I believe that electronic surveillance of my telephone conversations related to representing movants took place on the following dates:

November 24-30, 1976

December 1-20, 1976

5. The persons with whom I consulted on the above dates on the telephone concerning representing movants, and their telephone numbers, are the following:

(312) 278-6706, 248-7686	Michael Deutsch
& 236-3504	
" 236-3504	Mara Segal
(415) 824-9186	Susan Jordan
(505) 982-9886	Richard Rubin
" 988-1005, 827-5477,	Robert Rothstein
983-2129	
" 588-7316, 588-7601,	
& 588-7454	Pedro Archuleta
" 247-2092, 588-7252,	Maria Varela
588-7253	
" 684-2267	Moises Morales
" 588-7257	Richard Rosenstock
" 588-7258	Valentina Tijerina
" 776-2493	Craig Vincent
(312) 734-8276	Kingsley Clarke

6. Upon information and belief, calls were made to the following persons concerning the representation of movants before the grand jury:

(312) 477-9062	Dennis Cunningham
" 248-3574, 236-3504	Mara Segal
" 734-3758	Kingsley Clarke

7. The telephone numbers where I made or received calls related to representing movants before the grand jury are:

(505) 982-4679, 982-4670, 988-3671, 982-9642

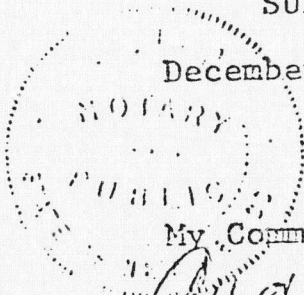
(312) 278-6706, 248-7686, 477-9062

8. I believe that the electronic surveillance mentioned above was conducted in connection with my preparation to represent movants before the grand jury in Chicago.

Joan Friedland
JOAN FRIEDLAND

SUBSCRIBED AND SWORN to before me this 21st day of

December, 1976.



C. B. Lopez
NOTARY PUBLIC

My Commission Expires:

Aug. 8, 1977

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

In the Matter of the
Grand Jury Subpoenas of

No. 76 GJ 1128

MOISES MORALES and
PEDRO ARCHULETA

MOTION FOR ADDITIONAL DISCLOSURE
OF ELECTRONIC OR OTHER SURVEILLANCE, ETC.

The Movants, Moises Morales and Pedro Archuleta move that this Honorable Court require The United States of America to provide additional disclosure of whether there has been illegal electronic surveillance upon the movants or their attorneys; to provide for a full investigation for surveillance and for an evidentiary hearing, all as requested in the movants' initial motion for disclosure of electronic or other surveillance, for full investigation for surveillance, and for an evidentiary hearing filed herein and which is incorporated herein as if fully set forth. As grounds therefore, the movants state as follows:

1. The movants incorporate herein as if fully set forth, the affidavits filed and attached to their motions to quash the Subpoenas and for disclosure of electronic or other surveillance.
2. The movants incorporate herein, their memorandums of law filed in support of their motions referred to in paragraph 1.
3. The movants attach hereto, and incorporate herein, the additional affidavits of Pedro Archuleta and Mary Josephine Lujan
4. The Government's response to Movants' motion is utterly incomplete and should be required to respond as requested by

movants in their initial motion for disclosure of electronic or other surveillance.

Respectfully Submitted By,

Tony Lopez Jr.
Dennis Cunningham
Michael Deutch
Attorneys for Movants
110 South Dearborn, Suite 707
Chicago, Illinois 60603

Tony Lopez Jr.
60603

A F F I D A V I T

I, Michael Deutsch, being first duly sworn, depose and say that:

1) I am one of the attorneys for movants Juan Lopez, Jose Lopez and Myrna Lopez.

2) Since early November, 1976 I have had numerous conversations over the telephone with the above-named movants and other attorneys concerning legal matters relevant to FBI harassment.

3) Since on or about November 18, 1976 I have spoken with the movants concerning their subpoenas to appear before the Grand Jury.

4) These conversations have taken place from the following phones from which I have conducted Grand Jury legal business:

- a) 312-278-6706 -- Western Community Defenders Office
- b) 312-248-7686 -- Home phone;
- c) 312-248-3574 -- Legal assistant's home.

5) On one occasion when I was speaking to Myrna Lopez (at 252-8872) about legal strategy on or about December 7, 1976 from my 278-6706 number the conversation was constantly interrupted by clicking and the sound of a third party breathing in the background.

6) On another occasion I was speaking to a lawyer, Kingsley Clarke, who is representing other witnesses subpoenaed before the Grand Jury from the 236-3564 number. While speaking to Mr. Clarke (at 734-6276) concerning grand jury legal strategy for an upcoming court date there was a loud buzzing sound in the background.

of our conversation and at different intervals a whirring sound like the winding of a tape recorder. Mr. Clarke commented to me that his phone never had operated in such a manner.

7) On numerous occasions between November 19, 1976 and the present time I have spoken to attorney Dennis Cunningham from my office and home phones to his office phone (235-3504) and home phone (477-9062) about legal strategy concerning the Grand Jury and activities of the FBI. On various occasions we have had interference with our phone conversations, including on one particular occasion on or about December 1, 1976 hearing male voices in muffled tones speaking in the background.

8) In addition, on or about December 4, 1976 I was speaking from my home phone ((312) 248-7686) to Professor Arthur Kinoy (at 201-746-6291) who has been consulting with us in our representation of witnesses before the Grand Jury. During the course of the conversation we experienced strange noises and interference including clicking and beeping sounds.

9) The above incidents and observations lead me to believe that my home and office phones are being electronically monitored.

Michael Deutsch

Subscribed and sworn to before
me this day of December, 1976.

Notary Public

E X H I B I T "A"

The following names and addresses comprise people who are involved in the legal representation of subpoenaed witnesses:

1. Michael Deutsch 312-278-6766
2403 W. North Avenue
Chicago, Illinois
- 2747 N. Seminary 312-248-7686
Chicago, Illinois
2. Dennis Cunningham 312-236-3504-06
110 S. Dearborn Rm. 707
Chicago, Illinois
- 1310 W. George 312-477-9062
Chicago, Illinois
3. Matt Piers 312-332-3221
110 S. Dearborn
Chicago, Illinois
- 2747 N. Seminary 312-278-7686
Chicago, Illinois
4. Peter Schmiedel 312-236-3504-06
110 S. Dearborn
Chicago, Illinois
- 727 1/2 W. Aldine 312-525-5106
Chicago, Illinois
5. Mara Siegel 312-248-3574
2243 N. Seminary
Chicago, Illinois
6. Kingsley Clarke 312-734-8276
2963 E. 88th St.
Chicago, Illinois
- 7851 S. Shore Drive 312-734-3758
Chicago, Illinois
7. Joan Friedland 505-982-4679
Santa Fe, New Mexico 505-982-9642
8. Arthur Kinoy (Home) 201-746-6291
Rutgers Law School 201-648-5521
9. Doris Peterson 212-674-3393
Center for Constitutional Rights
655 Broadway

10. Jose Antonio Lago
East New York Legal Services
503 Pennsylvania Avenue Bm. 1120
Brooklyn, NY
212-345-6200 (office)
212-OR-4-5676 (home)
11. Martin R. Stolar
350 Broadway
New York, NY
212-226-2880
12. James Reif
308 Livingston Street
Brooklyn, NY
212-858-9131
13. Susan Kaplan
Len Cavise
1022 Wolfram
Chicago, Illinois
312-935-3549
14. Susan Jordan
96 Jessie Street
San Francisco, CA
415-495-4495

A F F I D A V I T

I, Myrna Salgado Lopez, being first duly sworn, deposes and says that:

1. I am a witness under subpoena to testify before a Grand Jury matter 76 GJ 1128.

2. During the period commencing in September 1975, I noticed strange sounds, clicking noises and voices on my phone at 1001 N. Damen, 312-227-6372. At times I would have a difficult time getting a dial tone.

3. On numerous occasions my phone would go completely dead. I was forced to call the phone company several times so that they could make the necessary repairs. On one occasion in the summer of 1976 the phone lines outside of my home were completely severed, thereby cutting off my phone service.

4. Since early November 1976 I have once again noticed peculiar noises on my home phone (312) 235-2801, including clicking sounds and voices of third parties.

5. I have resided at the following addresses and used the following telephones with the expectation of privacy:

a. Mr. & Mrs. Lopez
1001 N. Damen
Chicago, Illinois

From October 1974 through
July 1976
312-

b. Mr. & Mrs. Lopez
2112 W. Thomas
Chicago, Illinois

From July 1976 through
present
312-235-2801

6. In addition, for the past two months I have discussed matters relating to my case before the Grand Jury and used the fol-

leaving phones with the expectation of privacy:

(312) 583-4050 extension 8371	Jose Lopez Northwestern University 5500 N. St. Louis Chicago, Illinois
(312) 252-8872	Rafael Cancel Miranda High School 1520 N. Claremont Chicago, Illinois
(312) 276-1123 311	Carmen Rosendez 1931 N. Drake Chicago, Illinois
(312) 342-4926	Maria Slagado 1931 N. Drake Chicago, Illinois
(312) 486-4799	Viola Salgado 1001 N. Damen Chicago, Illinois
(312) 772-1911	Andrea Lopez 2012 W. Cortez Chicago, Illinois
(312) 489-0391	Zenarda Lopez Reyes 2600 W. Logan Blvd. Chicago, Illinois
(312) 235-9253	Juan Alberto Lopez 2127 W. Thomas Chicago, Illinois
(312) 386-0270	Rev. & Alex Torres 710 Clinton Oak Park, Illinois
(312) 384-8118	First Congregation Church office 3700 W. Grand Chicago, Illinois
(312) 236-3504-06 236-3564	Mara Siegel (office) 110 S. Dearborn Chicago, Illinois
(312) 248-3574	Mara Siegel (home) 2243 N. Seminary Chicago, Illinois
(312) 248-7636	Michael Deutsch (home) 2747 N. Seminary Chicago, Illinois

(312) 278-6706-09

Michael Deutsch (office)
2403 W. North
Chicago, Illinois

(312) 332-3221

Matt Piers
110 S. Dearborn
Chicago, Illinois

Myrna Salgado Lopez

Subscribed and sworn to before
me this day of December, 1976.

Notary Public

STATE OF ILLINOIS)
COUNTY OF COOK)

A F F I D A V I T

I, Mara Siegel, being first duly sworn, depose and say that:

1. I am a law clerk employed by Mr. Dennis Cunningham at 110 S. Dearborn Street, Chicago, Illinois.

2. Mr. Cunningham is one of the lawyers representing Juan Alberto Lopez, Jose Lopez and Myrna Lopez in Grand Jury matter 76 GJ 1128.

3. Since early November 1976, I have assisted Mr. Cunningham and the other lawyers in the preparation of the Lopezes case.

4. In furtherance of the preparation of this matter, I have consulted various attorneys and legal workers who have a particular expertise in this area. I have conducted the following conversations with an expectation of privacy:

(212) 226-2800 (office)
(212) SC4-0665 (home)
On or about November 7, 1976.

Martin R. Stolar
350 Broadway
New York, NY

(212) 345-6200 (office)
(212) OR4-5676 (home)
November 8, 9, 10, 13, 16,
21, 29, December 7, 1976

Jose Antonio Lugo
East New York Legal Services
Brooklyn, NY

(212) 875-0993
November 28, 1976

Richard Wagner
293 State Street
New York, NY

(212) 260-1360
November 5, 15, 18, 23,
December 15, 1976

Franklin Siegel
853 Broadway
New York, NY

(212) 674-3303-09
November 7, 8, 12, 16, 17
19, 23, 29, December 1, 5
14, 15, 20, 21, 1976

Doris Peterson
Center for Constitutional Rights
853 Broadway
New York, NY

(415) 493-4495
November 29, 1976

Susan Jordan
96 Jessie Street
San Francisco, California

My home phone number is 312-248-3574 - 5. My office phone number is 312-236-3504 - 06, 236-3564. Most of the above-mentioned conversations have been conducted on either my office or my home phone.

5. Furthermore, I believe my home phone to be tapped. On numerous occasions in the last two months my phone has become inexplicably inoperative. I have been unable to make outgoing calls during this period. There is often up to a minute delay before I am able to obtain a dial tone. Frequently I hear voices of third parties during my phone conversations. I detect strange sounds, clicking, beeping and noises which resemble the sound of an operating tape recorder.

6. My home phone became inexplicably inoperative last week. On December 19, 1976 the phone went completely dead three times during the day. After making an outgoing call and hanging up (because the line was busy) I picked up the phone several times during the course of an hour. I hear a busy signal on each line.

Mara Siegel

Subscribed and sworn to before
me this day of December, 1976.

Notary Public

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

In the Matter of the
Grand Jury Subpoenas

76 GJ 1128

MOISES MORALES and
PEDRO ARCHULETA

ADDITIONAL AFFIDAVIT- WIRETAPPING

STATE OF ILLINOIS)
COUNTY OF COOK)SS
)

I, MICHAEL E. DEUTSCH, being first duly sworn
deposes and says that:

1. I am an attorney at law admitted to practice
before the Supreme Court of the State of Illinois.
2. Presently I am the Director of a community
defender office in the Puerto Rican community of Chicago. In
addition, I am been active in the legal and political campaign for
the freedom of the Five Puerto Rican Nationalist Prisoners who have
been held in United States Prisons for over two decades.
3. Ever since a quantity of dynamite was found
in an apartment in the Puerto Rican community of Chicago and the
FBI and Chicago Police instituted a massive manhunt, I have had
suspicious mechanical difficulties with my telephone.

4. These difficulties which included buzzing, ticking and other strange sounds have continued since early part of November until the present time. During this time, in addition to advising many community residents concerning their legal rights in relation to the FBI, I have participated in legal work on behalf of people subpoenaed before the Grand Jury.

5. In connection with this legal work, I have consulted extensively with attorney Joan Friedland and her clients Moises Morales and Pedro Archuleta. I have several long distance conversation concerning legal strategy with attorney Joan Friedland from my home telephone 248-7686, and office telephones 278-6706 and 236-3504. During this conversations the mechanical difficulties which I had been experiencing on prior occasions occurred during one conversation on or about December 6, 1976, it sounded to me like there was a third person breathing on the background of our conversation.

6. In connection with this legal work, I have consulted extensively with attorney Joan Friedland and her clients Moises Morales and Pedro Archuleta may have electronically surveilled and believe the Government should conduct a search of the appropriate agencies to determine if there has been wiretapping of my conversations.

GOVERNMENT'S RESPONSE TO EAVESDROPPING MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

IN THE MATTER OF PEDRO ARCHULETA, :

A WITNESS BEFORE THE NOVEMBER 9, : AFFIDAVIT

1976 ADDITIONAL GRAND JURY : 77 Cr. Misc.
(M11-188)

- - - - -x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

THOMAS E. ENGEL, being duly sworn, deposes and
says:

1. I am an Assistant United States Attorney in
the office of Robert B. Fiske, Jr., United States Attorney
for the Southern District of New York, and am in charge of
the grand jury investigation into a series of terrorist
bombings in New York City over the past two and a half years.
The credit for these bombings has been taken by a group
calling itself Fuerzas Armadas Liberation National
Puertorriquena and more generally known by its acronym FALN.

2. This affidavit is made in opposition to the
motion to quash the subpoena directed to Pedro Archuleta on
the ground that he and others with whom he associates have
been the subjects of illegal electronic surveillance which
has resulted in his being subpoenaed to testify.

This affidavit is made upon all the proceedings
herein and all proceedings had In the Matter of Raisa
Nemikin, A Witness Before the November 9, 1976 Additional
Grand Jury and In the Matter of Maria T. Cueto, A Witness
Before the November 9, 1976 Additional Grand Jury.

TEE:jw
06-2740
75-1568

4. In support of this refusal to appear and answer the questions before the grand jury Archuleta, Ms. Nemikin has submitted his own sworn affidavits as well as those of his attorney Joan Friedland and Doris Peterson, an attorney working with Ms. Friedland and others on Archuleta's behalf. Further, the affidavits submitted by Archuleta and others prospective witnesses there have been resubmitted here some of the persons listed in the Chicago affidavits are relevant only to other witnesses and accordingly are not relevant to Archuleta's claims here. These affidavits were submitted in support of Archuleta's motion seeking, inter alia, (a) disclosure fo all electronic surveillance conducted on the various persons and telephones, including those of the witness and many attorneys, (b) a so-called "all agency" search of federal agencies that conduct electronic surveillance, (c) a search of all state and local jurisdictions and private persons and corporations who overheard Archuleta, and (d) a hearing to determine various factual and legal matters in connection with the application.

5. I have conferred with Robert B. Fiske, Jr., United States Attorney for this District, Elkan Abramowitz, Cheif of the Criminal Division, and Joseph Jaffe, Administrative Assistant United States Attorney, all of whom are responsible for conducting criminal investigations in the United States Attorney's Office for the Southern District of New York. Each of these men has advised me that he has no knowledge of any electronic surveillance presently being conducted or ever having been conducted on the witness Pedro Archuleta.

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6. I do not know personally of any electronic surveillance being conducted or ever having been conducted on the witness Pedro Archuleta.

WHEREFORE, and for the reasons in the accompanying Affidavits of Martin A. Crowe and Christopher Morrison, Special Agents of the Federal Bureau of Investigation, the Government respectfully requests that the motion to quash be denied and for such other and further relief as may appear to the Court just and proper.

THOMAS E. ENGEL
Assistant United States Attorney

Sworn to before me this
day of June, 1977

15-1568
6-2740

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
IN RE PEDRO ARCHULETA, A WITNESS :
BEFORE THE NOVEMBER 9, 1976 : AFFIDAVIT
ADDITIONAL GRAND JURY. : 77 Cr. Misc.
: (M11-188)

-----x
STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

MARTIN A CROWE, being duly sworn, deposes and says:

1. I am a Special Agent of the Federal Bureau of Investigation and until May 27, 1977 was assigned to supervise the investigation of the terrorist activities and dynamite bombings carried out by a group calling itself the FALN in Manhattan during the past two and one-half years. At the request of Assistant United States Attorney Thomas E. Engel, F.B.I. headquarters in Washington, D.C. and the field office in New York checked their respective electronic surveillance indices to determine whether any reference to Pedro Archuleta appears in such indices. On or about May 19, 1977, Special Agent John Smythe reported by teletype affidavit (See Exhibit "A" attached hereto) that no reference to Pedro Archuleta appears in the electronic surveillance indices maintained by the F.B.I. Because the electronic surveillance indices maintained by the F.B.I. utilize an indexing system based upon the names of parties to any conversations and persons mentioned in any conversations, in addition to the particular telephone numbers subjected to electronic surveillance, I have no reason to believe that

6-2740

the F.B.I. possesses information derived from electronic surveillance with respect to Pedro Archuleta.

Martin A. Crowe

MARTIN A. CROWE
Special Agent
Federal Bureau of Investigation

Sworn to before me this
day of June, 1977

Feb

A F F I D A V I T

I, John L. Smythe, after having been duly sworn, do hereby depose and state the following:

I am a Special Agent of the Federal Bureau of Investigation and am currently assigned as a Supervisor at Federal Bureau of Investigation Headquarters in Washington, D. C.

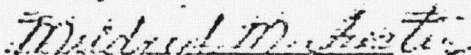
I have made a careful and diligent search of the appropriate records of the Federal Bureau of Investigation since October 1, 1976, to the present and have determined that no one identifiable with Pedro Archuleta, Pedro Antonio Archuleta, Sr., Nick Lopez, La Clinica Del Pueblo, La Cooperacion, Derechos De Familia, Richard Rosenstock, Charlie Driscoll, Joan Friedland, Morton Simon, Craig Vincent, Robert Rothstein, Moises Morales, Valentina Tijerina, Michael Deutsch, Mara Segal, Kingsley Clarke, Dennis Cunningham, Susan Jordan, or Mary Josephine Lujan was ever the target of electronic surveillance coverage nor were any of their conversations ever monitored by the Federal Bureau of Investigation.

I have also determined from this review that the Federal Bureau of Investigation did not maintain any electronic surveillance on premises which were known to have been owned, leased, or licensed by above subjects.


JOHN L. SMYTHE
Special Agent Supervisor
Federal Bureau of Investigation

SUBSCRIBED AND SWORN to me

this 19th day of May, 1977.


NOTARY PUBLIC

My Commission Expires September 14, 1981

TEB:jaw
75-1563

26

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

In the Matter of the Grand Jury : AFFIDAVIT
Served Upon Pedro Archuleta :
----- x : 77 Cr. Misc.
(MLI-188)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

STEVEN E. BRAUS, being duly sworn, deposes and says:

1. I am a Special Agent of the Federal Bureau of Investigation and am assigned to the New York Field Office.

2. Attached hereto are telecopies of two affidavits sworn to on June 2, 1977 (Exhibit "A" and June 8, 1977 (Exhibit "B", by John H. Smythe, a Special Agent of the Federal Bureau of Investigation and Supervisor in the Federal Bureau of Investigation headquarters in Washington, D.C. These telecopies were received by our office on or about June 2, 1977 and June 8, 1977 and were supplied in response to a request by Assistant United States Attorney Thomas E. Engel for use in the above-captioned proceeding.

STEVEN E. BRAUS

Sworn to before me this
day of June, 1977

A F F I D A V I T

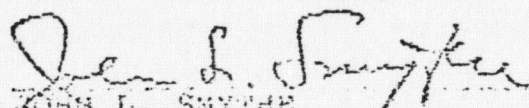
I, John L. Saythe, after having been duly sworn, do hereby depose and state the following:

I am a Special Agent of the Federal Bureau of Investigation and am currently assigned as a Supervisor at Federal Bureau of Investigation Headquarters in Washington, D. C.

I have made a careful and diligent search of the appropriate records of the Federal Bureau of Investigation since March 28, 1977, to the present and have determined that no one identifiable with Doris Peterson was ever the target of electronic surveillance coverage nor were any of her conversations ever monitored by the Federal Bureau of Investigation.

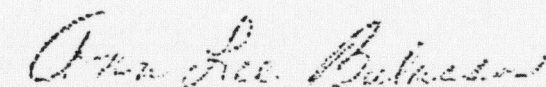
Exhibit "A"

I have also determined from this review that the Federal Bureau of Investigation did not maintain any electronic surveillance on premises which were known to have been owned, leased, or licensed by Doris Peterson.


JOHN L. SMYTHE
Special Agent Supervisor
Federal Bureau of Investigation

SUBSCRIBED AND SWORN to me

this 2nd day of June, 1977.


NOTARY PUBLIC

Commission Expires 4-30-78

A F F I D A V I T

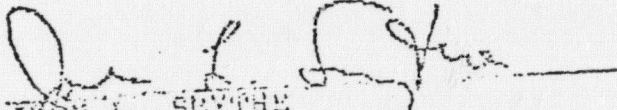
I, John L. Smythe, after having been duly sworn, do hereby depose and state the following:

I am a Special Agent of the Federal Bureau of Investigation and am currently assigned as a Supervisor at Federal Bureau of Investigation Headquarters in Washington, D. C.

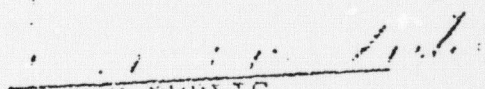
I have made a careful and diligent search of the appropriate records of the Federal Bureau of Investigation since October 1, 1976, to the present and have determined that no one identifiable with Tony Lopez, Maria Varela, Lawrence Stern, Holly Maguigan, Center For Constitutional Rights, Linda Backiel, Margaret Ratner, or Elizabeth Fink were ever the targets of electronic surveillance coverage nor were any of their conversations ever monitored by the Federal Bureau of Investigation.

Exhibit "B"

I have also determined from this review that the Federal Bureau of Investigation did not maintain any electronic surveillance on premises which were known to have been owned, leased, or licensed by above subjects.


JOHN L. SMYTHE
Special Agent Supervisor
Federal Bureau of Investigation

SUBSCRIBED AND SWORN to me
this _____ day of _____, 1977.


NOTARY PUBLIC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20

-----x
IN THE MATTER OF THE

GRAND JURY SUBPOENA

SERVED ON PEDRO ARCHULETA

: AFFIDAVIT
: 77 Cr. Misc.
: (M 11-188)
:

-----x
STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

CHRISTOPHER MORRISON, being duly sworn, deposes and
says:

1. I am a Special Agent of the Federal Bureau of
Investigation as of May 31, 1977 am assigned to supervise the
FBI investigation of the dynamite bombings and related terror-
ist activities carried out by a group calling itself the FALN.

2. I do not know of any electronic surveillance
being conducted or ever having been conducted on the witness
Pedro Archuleta.

Christopher Morrison
CHRISTOPHER MORRISON

Sworn to before me this
day of June, 1977

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

A F F I D A V I T

ROBERT T. McALLISTER, having been duly sworn on oath,
deposes and says that:

1. He is an Assistant United States Attorney for the
Northern District of Illinois and along with Assistant
United States Attorney Jeremy D. Margolis is assigned to 76
GJ 1128.

2. He is unaware of any electronic surveillance having
been conducted of Pedro Archuleta, Moises Morales or Joan
Friedland. To his knowledge, all information in the posses-
sion of the government relative to Pedro Archuleta and
Moises Morales has been obtained by record checks and inter-
views. No questions have been asked of Pedro Archuleta or
Moises Morales in connection with 76 GJ 1128 which are based
in whole or in part upon electronic surveillance.

Respectfully submitted,

ROBERT T. McALLISTER

Subscribed and Sworn to Before Me
this day of

NOTARY PUBLIC

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

A F F I D A V I T

JEREMY D. MARGOLIS, having been duly sworn on oath,
deposes and says that:

1. He is an Assistant United States Attorney for the
Northern District of Illinois and along with Assistant
United States Attorney Robert T. McAllister is assigned to
76 GJ 1128.

2. He is unaware of any electronic surveillance having
been conducted of Pedro Archuleta, Moises Morales or Joan
Friedland. To his knowledge, all information in the posses-
sion of the government relative to Pedro Archuleta and
Moises Morales has been obtained by record checks and inter-
views. No questions have been asked of Pedro Archuleta or
Moises Morales in connection with 76 GJ 1128 which are based
in whole or in part upon electronic surveillance.

Respectfully submitted,

JEREMY D. MARGOLIS

Subscribed and Sworn to Before Me
this day of

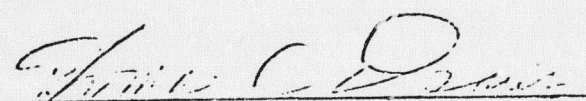
NOTARY PUBLIC

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

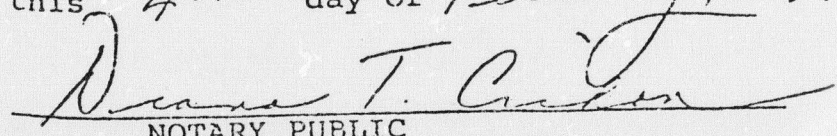
A F F I D A V I T

THOMAS C. DEANS, having been duly sworn on oath, deposes and says that:

1. He is and has been a Special Agent of the Federal Bureau of Investigation for over six years and is currently assigned to the Chicago office.
2. He is the agent who is primarily responsible for the FBI Chicago Division's investigation involving fugitive Carlos Torres, the "bomb factory" previously referred to in these proceedings and a string of terrorist bombings which have occurred in Chicago over the last two years, and have been associated with a group calling itself the FALN. In this capacity, he is responsible for the review of the investigative data and the assembling of reports relative to this investigation.
3. He is unaware of any electronic surveillance having been conducted of Pedro Archuleta, Moises Morales or Joan Friedland. To his knowledge, all information received by the FBI relating to Archuleta and Morales has been obtained by records checks and interviews.


THOMAS C. DEANS

Subscribed and Sworn to Before Me
this 4th day of February, 1977.


NOTARY PUBLIC

OPINION OF THE DISTRICT COURT
JUNE 15, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In the Matter of the Grand Jury
Subpoena Served Upon

M11-188

PEDRO ARCHULETA

MEMORANDUM

-----X

APPEARANCES:

ROBERT B. FISKE, JR., ESQ.
United States Attorney
One St. Andrews Plaza
New York, New York 10007

Of Counsel: THOMAS E. ENGEL, ESQ.
Assistant United States Attorney

JOAN FRIEDLAND, ESQ.
c/o Center for Constitutional Rights
853 Broadway
New York, New York 10003

Of Counsel: JOSE A. LUGO, ESQ.
DENNIS CUNNINGHAM, ESQ.

LASKER, D.J.

Pedro Archuleta was summoned to appear before a grand jury in this district on April 4, 1977. Prior to his appearance date he moved to quash the subpoena on various grounds. Oral argument on the motion to quash was held April 22, 1977, at which time Assistant United States Attorney Thomas Engel stated:

"I want to put the movants on notice at this time that if they have evidence of illegal electronic surveillance, they ought to bring it forward and they would not [sic] be dilatory in their motions and if they have evidence, it had better be from this date forward and not from here all the way back to 1974." (Tr. at 24).

On May 4, 1977 Archuleta, though "previously under the impression that a claim of illegal electronic surveillance in the grand jury context would be raised when, and if, certain questions were posed which Movant had reason to believe were based on information derived from illegal electronic surveillance,"^{1/} moved to quash the subpoena itself on the ground that it resulted from information gathered by illegal electronic surveillance. The original motion to quash was denied in a memorandum opinion filed May 27, 1977, which did not address the claim of illegal surveillance. Familiarity with the earlier memorandum is assumed.

The government has responded with three arguments:

(1) Archuleta has failed to make a colorable showing of illegal electronic surveillance and accordingly no governmental response is required; (2) Archuleta is not entitled to litigate questions of illegal electronic surveillance until and unless the government moves to hold him in contempt; and (3) in any event, the affidavits filed by A.U.S.A. Engel and several F.B.I. agents meet the government's burden of affirming or, as in this case, denying use or knowledge of any electronic surveillance, legal or illegal, by those in charge of this investigation.

I.

The first argument must be rejected. Movant's affidavits, which at this stage of the proceedings the government agrees must be taken as true, establish the following. For a year and half prior to being subpoenaed to Chicago in November, 1976, Archuleta "heard strange sounds on the telephone ... and also an echoing sound, and my attorneys and other people have made the same complaint to me." In an affidavit filed before the court in Chicago and incorporated in the moving papers here, Joan Friedland, one of Archuleta's attorneys, stated that since her representation of Archuleta began on November 23, 1976, she has heard "strange clicks and beeps" in her phone conversations with lawyers and other persons "connected with representing" Archuleta on both her home and office

phones. In addition, she stated that "there is often a hollow, echoing sound from my telephone [which has] worsened during the time since November 23, 1976."

Archuleta's supplemental affidavit swears that during the summer of 1976 a business associate gave him a phone number in Colorado at which he could be reached, and that Archuleta telephoned him at this number three times in October, 1976. In early 1977, Archuleta learned that one Mary Lujan, whose home he had telephoned to speak with his associate, had been questioned by the F.B.I. regarding her knowledge of Pedro Archuleta and the phone calls which he made to the telephone in her house. Archuleta's affidavit goes on to state that he had not spoken to any other persons concerning his phone calls to that telephone number, and his belief that the F.B.I. could have obtained the information only through use of illegal electronic surveillance. Mary Lujan, a teacher of handicapped children in Del Norte, Colorado, filed an affidavit supporting the recital of Archuleta's supplemental affidavit.^{2/}

On June 2, 1977 additional affidavits in support of Archuleta's motion were filed by two of his attorneys. Joan Friedland's supplemental affidavit states that since March 29, 1977 (the date on which this grand jury subpoena was issued) she has had numerous difficulties with phone calls made in connection with her representation of

Archuleta, to wit, the sound of persons picking up the phone and hanging up even though the party called subsequently stated that they had not done so; high-pitched sounds on the line resembling the noise of a tape recorder running at high speed; continued echoes, clicks and unknown voices in the background of her calls. The affidavit of Doris Peterson, a staff attorney at the Center for Constitutional Rights in New York City involved in representing Archuleta in connection with the instant grand jury proceedings, states that:

"3. On April 16, 1977 I flew to Albuquerque New Mexico to consult with Mr. Archuleta in connection with his grand jury case. When I arrived in Albuquerque on April 15, 1977 [sic] I rented a car and traveled in it with Jose A. Lugo, another CCR staff attorney to see our client at his home in Tierra Amarilla, New Mexico.

4. As we were late for our appointment, we stopped at a roadside telephone on the outskirts of Sante Fe, New Mexico, to telephone Mr. Archuleta to tell him that we would be late.

5. I called Mr. Archuleta at La Cooperacion where he works, area code (505) 588-7601 and charged the number to my CCR credit card.

6. I heard men's voices talking and heard someone say, "Pedro has left" before I even said "hello."

7. --I kept saying, --"hello," --"hello," --"hello."

8. There was no answer and when it became clear that no one had answered

the phone, I got the operator, explained my difficulty and was connected with La Cooperacion.

9. A woman answered La Cooperacion's telephone and told me that Mr. Archuleta had gone home and would wait there for us.

10. I made this call from a telephone in area code 505. The number on the telephone was 983.9820.

11. The strange happenings described above where I could hear the voices of men talking lead me to believe that electronic surveillance was being conducted in connection with La Cooperacion's telephone."

Although neither the supplemental Friedland affidavit nor the Peterson affidavit involve occurrences before this subpoena was issued, they support an inference that in the recent past phone conversations with Archuleta may have been tapped which in turn supports an inference that tapping may have occurred prior to issuance of the subpoena.

Where the government does not admit illegal wire-tapping, it is difficult to imagine how a movant can do better than make the colorable showing of possible illegal electronic surveillance that has been made here. Comp. United States v. Alter, 482 F.2d 1016, 1024-25 (9th Cir. 1973). In addition to the allegations recited above, the affidavits set forth with specificity the names and telephone numbers of persons whose conversations with Archuleta or his attorneys are believed to have been

monitored, and the time periods during which the eavesdropping was claimed to have occurred. . . . These allegations meet the standards set forth in United States v. Alter, supra, 482 F.2d at 1016, adopted by implication in In re Buscaglia, 518 F.2d 77, 78 (2d Cir. 1975), for a "prima facie showing" of illegal electronic surveillance requiring the government, under 18 U.S.C. §3504 either to "affirm or deny" the existence of unlawful conduct.

II.

Gelbard v. United States, 408 U.S. 41 (1972) and Calandra v. United States, 414 U.S. 338 (1974), however, support the government's current position that the present posture of the case is inappropriate for adjudication of the claims of illegal electronic surveillance. Calandra, in our view, stands for the proposition that a grand jury witness lacks standing to move to suppress evidence received by the grand jury, or a grand jury subpoena, and may not refuse to answer questions put to him by the grand jury, on grounds that they are based on or derived from evidence illegally obtained in violation of the Constitution. Although Calandra involved a suppression motion not directed at the subpoena itself, a heavier burden lies on one seeking to suppress a testimonial subpoena than on one objecting to answering specific questions. Memorandum of May 27, 1977, at 23-24. If

the constitutional exclusionary rule is not available on a motion to quash specific questions put by the grand jury, then a fortiori it is unavailable as a basis for a motion to quash a testimonial subpoena.

Thus, if Archuleta is entitled to litigate his claims of illegal electronic surveillance his standing to do so must be derived from the governing statute. In Gelbard v. United States, supra, 408 U.S. 41, the Court held that in defense of a contempt charge a grand jury witness could invoke 18 U.S.C. §2515^{3/}, which bars the use of evidence before official bodies, including grand juries, of the contents and fruits of illegal wiretapping, and put the government to its burden of disclosing any possibly illegal wiretaps.

The Court reasoned that the purposes of Title III of the Omnibus/Safe Streets Act of 1968

"would be subverted were the plain command of §2515 ignored when the victim of an illegal interception is called as a witness before a grand jury and asked questions based upon that interception. Moreover, §2515 serves not only to protect the privacy of communications, but also to ensure that courts do not become partners to illegal conduct... Consequently, to order a grand jury witness on pain of imprisonment, to disclose evidence that §2515 bars in unequivocal terms is both to thwart the congressional objective of protecting individual privacy by excluding such evidence and to entangle the courts in the illegal acts of Government agents." 408 U.S. at 51.

In addition, 18 U.S.C. §2504, which requires that "upon a claim by a party aggrieved that evidence is inadmissible ^{requires} because of an illegal interception, / the government to affirm or deny the illegal act, was found by the Court to "confir[m] that Congress meant that grand jury witnesses might defend contempt charges by invoking the prohibition of §2515 against the compelled disclosure of evidence obtained in violation of Title III." 408 U.S. at 55.

The government in Gelbard had argued that while standing alone §2515 could be construed to allow a grand jury witness to invoke its prohibition as a defense to contempt, Congress could not have intended this result since in §2518(10)^{4/}_(a) it excluded grand juries from the list of proceedings in which aggrieved persons could move to suppress evidence obtained through illegal eavesdropping. Although apparently agreeing with the government that grand juries had been intentionally excluded from the statutory suppression hearing procedure provided for in §2518(10), 408 U.S. at 59 n. 19, the Court disagreed with the government's conclusion:

"[I]t does not follow from the asserted omission of grand jury proceedings from the suppression provision that grand jury witnesses cannot invoke §2515 as a defense in a contempt proceeding under 28 U.S.C. §1826(a). The congressional concern with the applicability of §2518(10)(a)

in grand jury proceedings ... was ... that defendants and potential defendants might be able to utilize suppression motions to impede the issuance of indictments.... The 'general rule' ... is that a defendant is not entitled to have his indictment dismissed... simply because the Government 'acquire[d] incriminating evidence in violation of the [law],' even if the 'tainted evidence was presented to the grand jury.' [citation omitted] But that rule has nothing whatever to do with the situation of a grand jury witness who has refused to testify and attempts to defend a subsequent charge of contempt." 408 U.S. at 59-60.

It went on to note that the "usual procedure" by which grand jury witnesses discover whether they may refuse to answer questions is "upon the Government's motion, to have a court order a grand jury witness to testify upon penalty of contempt for noncompliance.... The asserted omission of grand jury proceedings from §2518(10)(a) may well reflect congressional acceptance of that procedure as adequate in these cases." 408 U.S. at 60-61.

The Court's discussion, while concededly not deciding the point, strongly suggests that a grand jury witness' statutory right to litigate claims of illegal electronic surveillance arises only in defense to a motion to hold the witness in contempt. This view is supported by the language of §2515, which the Court found to be the basis for the witness' defense. It provides that "no part of the contents of such communication [unauthorized

electronic eavesdropping, and no evidence derived there-
from may be received in evidence.... before any court [or]
grand jury...." (emphasis added,. A grand jury does not
'receive evidence' on a testimonial subpoena until and
unless the witness answers questions. Requiring a witness
to comply with a testimonial subpoena to the extent of
appearing before the grand jury and making specific ob-
jections to answering particular questions involves no
possibility of violating §2515.

Accordingly, we hold that the witness has no
present right to litigate whether he was the victim of
illegal electronic eavesdropping and whether that eaves-
dropping tainted these grand jury proceedings. Of course,
there may be circumstances in which considerations of
judicial economy suggest that the challenge should be
litigated on a motion to quash a subpoena. In In re
Mintzer, 511 F.2d 471, 472 (1st Cir. 1974), the Court of
Appeals noted that

"The district court had, in an
effort to expedite matters, per-
mitted the witness to seek govern-
ment affirmance or denial of wire-
tapping, under 18 U.S.C. §3504,
prior to his grand jury appearance.
This was not required, because
appellant was not yet an 'aggrieved
person' as defined by the statute.
Gelbard v. United States, 408 U.S.
41 (1972); see In re Lochiatto,
497 F.2d 803, 806 (1st Cir. 1974).
But the district judge reasoned
that time would be saved by extend-

ing the privilege before the witness was brought before the grand jury."

In this case, however, the context suggests the possibility that the witness may challenge specific questions on grounds of illegal electronic surveillance even if the motion to quash the subpoena on these grounds is denied on the merits. Thus, concern for judicial economy requires holding in abeyance any consideration of the electronic surveillance claims on their merits until such time as the government may seek to hold the witness in contempt.

III.

The government's apparent reversal of position concerning the appropriate time for moving with respect to claims of illegal electronic surveillance is understandable in light of the recent Court of Appeals decision in United States v. Yanagita, No. 76-1405 (2d Cir. Mar. 30, 1977), where the court held that "a claim under §3504 [must] be asserted promptly upon the witness' having a reasonable basis for doing so and may be waived by his failure to avail himself of an opportunity to make such a timely assertion after he has gained knowledge of facts providing a reasonable basis for the claim." Although the court also indicated that timeliness was of less urgency in raising such claims before a grand jury than in an ongoing criminal trial, the reasons for re-

quiring timely assertion -- in particular, allowing the government sufficient time to make a full and complete agency check -- support the government's position here that Archuleta set forth at present those facts known to him which indicate the possibility of illegal surveillance, so that when the time arrives for adjudication of the claim, the government can be prepared with appropriate and complete responses.

That being the nature of the government's concern, it is only appropriate that we indicate our views on the adequacy of the response put in this far by the government. Although we make no holding on this point, the affidavits submitted by Archuleta and the nature of the investigation of which he is a part as revealed in earlier papers filed with the court suggest that an appropriate government response should include either denial or affirmance of electronic surveillance in New Mexico (which may have directly or indirectly provided federal officials with information forming the basis either for the subpoena or specific questions), together with appropriate affidavits from officials in those localities in which specific claims supporting an inference of wiretapping have been made.

IV.

Archuleta has also moved to stay execution of the

subpoena until the government has submitted the report on possibly wrongful disclosure of information to the press required by our memorandum of May 27th. However, as set forth at length in that opinion, quashing a subpoena is not the appropriate remedy for wrongdoing in connection with disclosures to the press in violation of federal rules. Indeed, the purpose of ordering the report was to determine, if possible, who the responsible persons were in order that sanctions may be imposed on them. Accordingly, no legitimate purpose would be served by staying the subpoena.

For all the foregoing, Archuleta's motions to quash the subpoena and/or to stay its execution are denied.

It is so ordered.

Dated: New York, New York
June 14, 1977.

MORRIS E. LASKER

U.S.D.J.

FOOTNOTES

1. Affidavit of Joan Friedland, ¶2, annexed to "Amendment to Motion to Quash the Subpoena."
2. The government's memorandum suggests that this incident may have resulted not from electronic surveillance but from investigative checking of long-distance phone company records. That this may be so does not preclude the possibility of Archuleta's claim being correct.
3. Section 2515 provides in full:

"Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter."

4. Section 2518(10)(a) provides that:

"(10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that--

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity

to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice."

ORDER AND APPLICATION FOR IMMUNITY

100-116
75-1500
-2-1525

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

32

In the Matter

ORDER

of

77 Cr. Misc.

PEDRO ARCHULETA, A WITNESS BEFORE
THE NOVEMBER 9, 1976 ADDITIONAL
GRAND JURY

(111 111)

Upon the oral and annexed written application of Robert E. Fiske, Jr., United States Attorney for the Southern District of New York, for an order pursuant to Title 18, United States Code, Sections 6002 and 6003, compelling Pedro Archuleta to testify and to provide other information before the November 9, 1976 grand jury in the United States District Court for the Southern District of New York, and upon the affidavit of Thomas E. Engel, Assistant United States Attorney, dated June 17, 1977 submitted in support thereof.

Upon the refusal of Pedro Archuleta to testify and provide information before said grand jury on the basis of his privilege against self-incrimination on June 17, 1977:

Upon the ^{oral representation} ~~judgment~~ of the United States Attorney that the testimony and other information which Pedro Archuleta could give may be necessary to the public interest; and

Upon the approval of the aforesaid application by the Department of Justice, by the Benjamin R. Civiletti, Assistant Attorney General, pursuant to the authority vested in him by Title 18, United States Code, Section 6003, and 2

C.F.R. 9.175, ~~it is~~ and after hearing Joan McCalland, Esq., attorney for Pedro Archuleta, the witness, in opposition to the application, it is

ORDERED that, pursuant to Title 18, United States Code, Sections 6002 and 6003, Pedro Archuleta give testimony and provide other information as to matters about which he may be questioned before said grand jury, and

IT IS FURTHER ORDERED that, pursuant to Title 18, United States Code, Sections 6002 and 6003, no testimony or other information compelled under this Order, or any information directly or indirectly derived from such testimony or other information, may be used against Pedro Archuleta in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order.

Dated: New York, New York
June 17, 1977

Charles L. Bricant₃
U. S. D. J.
(Part I)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter : AFFIDAVIT
of : 77 Cr. Misc.
PEDRO ARCHULETA, A WITNESS BEFORE : (111-188)
THE NOVEMBER 9, 1976 ADDITIONAL
GRAND JURY :
-----x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

THOMAS E. ENGEL, being duly sworn, deposes and
says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, and I am responsible for the investigation into terrorist bombings in New York City for which a group known as the FALN has claimed responsibility and about which Pedro Archuleta has been called to testify.

2. This affidavit is made in support of the application by the United States Attorney for the Southern District of New York for an order pursuant to Title 18, United States Code, Section 6002 and 6003 directing Pedro Archuleta to give testimony and provide other information before the November 9, 1976 Additional Grand Jury.

3. On June , 1977 Pedro Archuleta invoked his privilege against self-incrimination before the November 9, 1976 Additional Grand Jury sitting in the United States District Court in the Southern District of New York and refused to answer questions relating to the inquiry of the Grand Jury into alleged violations of Sections 371 and 841 et seq., Title 18, United States Code.

LE:jv
5-1366
2-1925

4. Upon information and belief, Pedro Archulata can give relevant information before the grand jury which information may be necessary to the protection of the public interest.

5. This application for immunity is made in good faith.

WHEREFORE, and upon the application of Robert S. Fiske, Jr. annexed hereto, it is respectfully requested that the application be granted.

THOMAS L. ENOEL
Assistant United States Attorney

Sworn to before me this
day of June, 1977

In the Matter

: APPLICATION FOR PRODUCTION

of

: 77 cr. disc.

PEDRO ARCHULETA, A WITNESS BEFORE : (M11 100)
THE NOVEMBER 9, 1976 ADDITIONAL
GRAND JURY :

Robert B. Fiske, Jr., United States Attorney for
the Southern District of New York, for the reasons herein-
after set forth and upon the affidavit of Thomas J. Fiske,
Assistant United States Attorney, sworn to June 1, 1977,
hereby requests an order instructing Pedro Archuleta to give
testimony and provide other information pursuant to the
provisions of Title 18, United States Code, Sections 6002
and 6003 and respectfully alleges as follows:

1. By subpoena dated March 26, 1977 and served
upon him March 29, 1977, Pedro Archuleta was called to
testify before the November 9, 1976 Additional Grand Jury
(the "Grand Jury") and on June 1, 1977, he refused to
testify on the ground, inter alia, that the answers to
questions put to him would tend to incriminate him personally,
thereby invoking the privilege against self-incrimination
under the Fifth Amendment of the Constitution of the United
States.

2. This application is made in good faith and
upon the judgment of the undersigned that the testimony may
be necessary to the public interest.

3. This application is made with the approval of
the Department of Justice, by the Benjamin L. Civiletti,
Assistant Attorney General, pursuant to the authority vested
in him by Title 18, United States Code, Section 6003, and
Title 28, Code of Federal Regulations, Section 1.17. A

copy of Mr. Civiletti's letter of June 9, 1977 setting forth the approval of the Department of Justice for this application is attached hereto as Exhibit "A" and is, with leave of the Court, made a part of this application.

WHEREFORE, the United States of America by the United States Attorney for the Southern District of New York respectfully requests the Court to issue an order requiring Pedro Archuleta to give testimony and provide other information with regard to all matters about which he may be questioned, pursuant to the provisions of Title 18, United States Code, Sections 6002 and 6003.

Respectfully submitted,

ROBERT B. FISKE, JR.
United States Attorney

Department of Justice
Washington 20530

9
T. ENGEL

75-1568

June 9

1977

Honorable Robert B. Fiske, Jr.
United States Attorney
Southern District of New York
New York, New York

Attention: Mr. Thomas E. Engel
Assistant United States Attorney

Re: In the Matter of the Grand Jury
Investigation of the FALN Terrorist
Bombings

Dear Mr. Fiske:

Pursuant to the authority vested in me by 18 U.S.C. §6003(b) and 28 C.F.R. §0.175(a) I hereby approve your request for authority to apply to the United States District Court for the Southern District of New York for an order pursuant to 18 U.S.C. §§6002-6003 requiring Pedro Antonio Archuleta, III., to give testimony or provide other information in the above matter and in any further proceedings resulting therefrom or ancillary thereto.

Very truly yours,

B. R. Civiletti

Benjamin R. Civiletti
Assistant Attorney General
Criminal Division



Exhibit "A"

GRAND JURY MINUTES
JUNE 17, 1977

ML: 1 (2)

June 17, 1977

Pedro Archuleta
Interpreter: Ms. No. 1
Seltzer

Re: John Doe

Nov. Add No. 1

Mr. Thomas E. Engel

W I T N E S S R E C A L L E D

MR. ENGEL: Would you please mark this
as GRAND JURY EXHIBIT No. 1. (So marked)

I ask the Foreman to remind the
Interpreter of her oath.

FOREMAN : The interpreter is reminded
that she is still under oath.

INTERPRETER: Yes/

FOREMAN : The witness is also re-
minded that he is still under oath.

WITNESS : (In English) Yes.

BY MR. ENGEL:

Q Mr. Archuleta, I am showing you Grand Jury
Exhibit 1, which has been so marked Grand Jury Exhibit
1, a copy of an order signed today by Judge Bryan, and
you understand, do you not, that you are testifying pur-
suant to that order of immunity which is embodied in
Grand Jury Exhibit 1? A I would like to
consult my attorney.

MR. ENGEL: I ask the Foreman to excuse
you.

FOREMAN : You may be excused.

WITNESS : Can I take this with me?

(Indicating Order)

MR. ENGEL: Yes, you may.

WITNESS TEMPORARILY EXCUSED -- RETURNS

6/17/77

FOREMAN: The witness is to be reminded
he is still under oath.

WITNESS: Yes.

Q You may answer the question, Mr. Archuleta.

A I understand that this order does not protect my
Fifth Amendment rights.

Q You understand that this order does not protect
your Fifth Amendment rights, is that what you said?

A Yes.

Q I omitted making a record of this this morning
and this afternoon during your appearance here, but your
attorney, Joan Freidland and others working with her,
have been outside this Grand Jury during your appearance
this morning and during your appearance this afternoon,
is that correct?

A I would like to consult
with my attorney.

MR. ENGEL: Very well, sir.

FOREMAN : You may be excused.

WITNESS EXCUSED -- WITNESS RETURNS

FOREMAN: The witness is reminded that he
is still under oath.

WITNESS: Yes.

Q You may answer, Mr. Archuleta.
you repeat the question, please.

A Would

6/17/77

Q Yes, during your appearance here this morning and your appearance here this afternoon, your attorney, Joan Freidland, assisted by others, has been outside the Grand Jury Room and you have consulted with her from time to time, have you not?

A I am represented by counsel.

Q And she is outside the Grand Jury Room, is that correct?

A Yes.

Q Very well, now Mr. Archuleta, I will put this question to you: Did you provide dynamite to anyone you knew to be in a group called F.A.I N. at any time prior to January 24, 1975?

A Could you go a little

bit slower on that question?

(Attorney repeats question slower) adding:
If that question sounds familiar it's because I asked you the same question this morning before you were granted immunity by the court. Would you answer it, please.

A I would like to consult with my lawyer.

MR. ENGEL: Very well, you may be excused by the Foreman.

FOREMAN : You are excused.

WITNESS EXCUSED _ WITNESS RETURNS

(CONTINUED by E.J.C.)

EJC-1(2)
[Fro ML]
Nov Add #1

June 17, 1977
Re: John Doe
Mr. Engel

Pedro Antonio Archuleta, III
[Interpreter Norma Seltzer]
[All questions translated into Spanish;
All answers made in English]

[Witness Pedro A. Archuleta, III, returns]

FOREMAN: Witness is to be reminded he's still
under oath.

Q You may answer, Mr. Archuleta. A "Members of
the Jury, you are independent of the prosecutor. You are
independent of the FBI. You can have decision and make your
own decisions -- you can have discussions and make your own
decision in private, without the U. S. Attorney being here.
You can have your own legal advisor if you want. You should
understand that my Fifth Amendment rights does not protect
me now and that unless you decide to excuse me from answering
any more questions, I will be put in jail thousands of miles
from my family and my community and keep -- and keep me --
and kept there for most of the next year. You have the power
to prevent that. you can excuse me now and leave me free to go
home and get on with my work. I ask you to exercise that
power and decline -- and decline to ask me any more questions.
I refuse to answer that question because the grant of immunity
does not prevent my being indicted, but only prohibit any use
of my own testimony for that purpose. I, therefore, continue
to claim my Fifth Amendment rights. I refuse to answer that
question because I have no guarantee that whatever I may say
here will not be leaked to the press or to prosecutors or to
-- to the press by the Government or the prosecutors in
Chicago where I am a target of the investigation."

Q Are you finished with your answer, Mr. Archuleta?

A Yes.

FBI/MI-7 25-73 100M 2107

6-17-77

[Interpreter Seltzer]

Q Very well. I'll ask you a second question. Do you know the source of the dynamite explosives used at the bombing of Fraunces Tavern? A I like to consult with my attorney.

Q Very well.

Foreman: Excused.

[Witness leaves room, then returns]

FOREMAN: Witness is reminded he's still under oath.

Q You may answer. A "In response to the question before this one, I want you to understand that I continue to have all the objections I raised this morning, and in response to the last question you asked me, I object to -- I object to answer it in all the grounds I raised this morning and the following one. I refuse to answer that question because the grant of immunity doesn't put -- prevent my being indicted, but only prohibits any use of my own testimony for that purpose. I, therefore, continue to claim my Fifth Amendment right. I refuse -- I refuse to answer that question because I have no guarantee that whatever I may say here will not be leaked to the press by the Government or -- by the Government or to the prosecutors in Chicago, where I am a target of investigation. Members of the Jury, you should understand that my Fifth Amendment rights do not protect me now and that unless you decide to excuse me from answering

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[Interpreter Seltzer]

any more questions, I will be put in jail thousands of miles from my family and community, kept there for most of next year. You have the power to prevent that. You can excuse me now and leave me free to go home and get on with my work. I ask you to exercise that power and decline to ask me any more questions."

Q Mr. Archuleta, I'll put this question to you, please. Do you know anyone who was responsible for the bombing at Fraunces Tavern? A I'd like to consult with my attorney.

FOREMAN: Excused.

[Witness leaves room, then returns]

FOREMAN: Witness is again reminded he's still under oath.

Q You may answer. A "I refuse to answer that question because the grant of immunity does not prevent my being indicted, but only prohibits any use of my own testimony for that purpose."

Q Mr. Archuleta, I'd like to interrupt. Is this the same answer you gave to the two previous questions?

A I'd like to consult with my attorney.

Q Very well. Very briefly, Mr. Archuleta.

FOREMAN: Excused.

[Witness leaves room, then returns]

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[Interpreter Seltzer]

FOREMAN: Witness is reminded he's still under oath.

Q You may answer, Mr. Archuleta. A "I would like to make a complete statement of my reason for not answering that question so that the Grand Jury understands them."

Q Very well, please proceed. A "I refuse to answer that question because the Grand Jury -- the grant for immunity does not prevent my being indicted, but only prohibits any use of my own testimony for that purpose. I, therefore, continue to claim my Fifth Amendment right. I refuse to answer that question because I have no guarantee that whatever I may say here will not be leaked to the press by the Government or to prosecutors in Chicago, where I am a target of the investigation. In response to the last question you asked me, I object to -- I object to any answering -- I object to answering it on other grounds I raised this morning and the following one. Members of the Jury, you should understand that my Fifth Amendment rights does not protect me now and that unless you decide to excuse me from answering any more questions, I will be put in jail thousands of miles from my family and community and kept there for more -- for most of the next year. You have the power to prevent that. You can excuse me now and leave me free to go home and get on with my work. I ask you to exercise that power and decline to ask me any more questions. "

Q Mr. Archuleta, in early 1968 did you, yourself,

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Pedro A. Archuleta, III

[Interpreter Seltzer]

steal any dynamite from the Heron Dam Project site near Park View, New Mexico? A I'd like to consult with my attorney.

Q You may be excused.

FOREMAN: Excused.

[Witness leaves room, then returns]

FOREMAN: Witness is reminded he's still under oath.

Q You may proceed, Mr. Archuleta. A "In response to the last question you asked me, I object to answering it on all the grounds I raised this morning and the following one. I refuse to answer that question because I have no guarantee that whatever I say here will not be leaked to the press by the Government or to prosecutors in Chicago, where I am a target of the investigation. I refuse to answer that question because the grant of immunity doesn't prevent my being indicted, but only prohibits any use of my own testimony for that purpose. I, therefore, continue to claim my Fifth Amendment right. Also, at this point, I would like the opportunity to address the Grand Jury, personally, without the U. S. Attorney being present.

Q Are you finished with your answer, Mr. Archuleta?

A Yes.

Q Mr. Archuleta, I've asked you the following four questions. One, did you provide dynamite to anyone you knew

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[Interpreter Seltzer]

to be in a group called FALN at any time prior to January 24, 1975. Two, Do you know the source of the dynamite explosives used at the bombing of Fraunces Tavern. Three, do you know anybody who was responsible for the bombing of Fraunces Tavern. Four, in early 1968 did you, yourself, steal any dynamite from the Heron Dam Project site near Park View, New Mexico. And I'll direct the Foreman to - or ask the Foreman, rather - to direct you to answer those questions.

FOREMAN: You are so directed.

WITNESS: I'd like to consult with my lawyer.

MR. ENGEL: You may be excused.

FOREMAN: You're excused.

[Witness leaves room, then returns]

FOREMAN: The witness is reminded that he's still under oath.

Q You may proceed, Mr. Archuleta. A "I will not be used to help the FBI or the Federal Government smash a Chicano struggle in the southwest or the Puerto Rican movement for independence, or any other movement for liberation. I will not become a stoolie for this system. I will stand united with my two comrades in jail, Maria and Raula, because we will prove to all the press people that the Government will not scare us by putting us in jail. Maria and Raula being in jail have made me stronger. We will support each other and set an example for the rest of the brothers and

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[Interpreter Seltzer]

sisters that the FBI and the Government will not dissuade us. Our people unite and fight together against repression by the Government so this will not become another McCarthy era. I refuse to answer each of those questions for all the legal reasons I stated previously. Members of the Grand Jury, you should understand that my Fifth Amendment rights don't protect me now and that unless you decide to excuse me from answering any more questions, I will be put in jail thousands of miles from my family and community and kept there for most of the next year. You have the power to prevent this. You can excuse me now and leave me free to go home and get on with my work. I ask you to exercise that power and decline to ask me any more questions. "

Q Mr. Archuleta, in response to your invitation to speak to the Grand Jury in the absence of myself, it is the sense of the Grand Jury that your speaking to them in my absence would serve no useful purpose, and the Grand Jury has asked me, on their behalf, to decline your invitation. And I would like to inform you now, Mr. Archuleta, that it's my intention to proceed to courtroom 506 and move that you be held in contempt of court. Because of that, Mr. Archuleta, I'll ask you if you have anything further you wish to say or whether that has any effect on your desire to answer these questions. A I would like to, at this point, consult my lawyers.

MR. ENGEL: Mr. Foreman.

RJC-8(2)

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Pedro A. Archuleta, III

[Interpreter Seltze.]

FOREMAN: Excused.

[Witness leaves room, then returns]

FOREMAN: Witness is to be reminded he's still under oath.

Q You may proceed, Mr. Archuleta. A Grand Juries are a principal form of repression today because their powers have been taken over by the FBI, who are major suspects in the killing of Martin Luther King and others. Because a Grand Jury is being used to smash the organizations of poor and powerless people, I will not cooperate in this repression. Thank you."

Q Are you finished, Mr. Archuleta? A Yes.

Q I'll ask the Foreman, please, to direct that you appear in Room 506 immediately with your attorneys.

FOREMAN: You are so directed.

WITNESS: Thank you.

[Witness leaves room]

EJC-9(2)

June 17, 1977

Pedro Antonio Archuleta, III
[Interpreter Norma Seltzer]

[After Court
hearing]

Re: John Doe

[All questions translated by Interpreter;
All answers made in English by witness]

Nov. Add. #1

Mr. Engel

P E D R O A N T O N I O A R C H U L E T A, III,

RECALLED:

FOREMAN: Witness is reminded he's still under
oath, as is the interpreter.

BY MR. ENGEL:

Q Pursuant to Judge Brieant's directions, Mr. Archuleta,
I'm going to ask you again, one, did you provide dynamite to
anyone you knew to be in a group called FALN at any time prior
to January 24, 1975?

A You want me to go
ahead and answer that now?

Q [Nods] A Gentlemen of the Jury, as well as
Mr. Engels here, you probably never heard of a Chicano before,
until today; but in me you have seen the spirit of my ances-
tors, - Emiliano Zapata and Francisco Villa - and also
the spirit of Pedro Albizu Campos.

Q Is that your answer? A Yes. No, not yet. I
am proud of the stand I too, here today, and I will take it
any day as long as I am here, and for the rest of the day or
night, and I will stay united, like I say, with my comrades
in jail; and I don't care who orders me to come and answer
these questions, I will not answer them because I am proud
of what -- what I am. I am proud of being a struggle that
you probably are involved in it too. So on those grounds I
stated all day today, I still deny to answer these questions.

Q You're finished with your answer? A Yes.

6-17-77

[Interpreter Seltzer]

Q Number two, do you know the source of the dynamite explosives used to dynamite Fraunces Tavern? A My answer is the same.

Q Three, do you know anybody who is responsible for the bombing at Fraunces Tavern? A My answer is the same.

Q Four, in early 1968, did you, yourself, steal any dynamite from the Heron Dam Project site near Park View, New Mexico? A What question was that?

Q Do you want me to repeat it? A Yes, number. What question was it?

Q Number four. A Go ahead, repeat it.

Q In early 1968, did you, yourself, steal any dynamite from Heron Dam Project site near Park View, New Mexico?

A My answer is the same as the rest. No matter how long you put me in jail, for how many years, still won't answer them.

Q Mr. Archuleta, you heard the Government, the Judge, direct that, upon your refusal to answer, you'd be excused, and that the Government move to have you held in contempt - it's most probable that this will occur first thing next week. I just want you to be made aware of it. A Mr. Engels,

I have been aware of this since I was first aware of the struggle that my people and other oppressed people in this country, and I have been prepared for it, I have been prepared for it a long time. Like I said a while ago, whenever you go to jail, and for as long as I go to jail, I owe this to my people and to the rest of the people in this country.

EJC-11(2)

Pedro A. Archuleta, III

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Q Very well, Mr. Archuleta. I'll see you in court next week. A Thank you.

Q You're excused.

MR. ENGEL: Mr. Foreman, -

FOREMAN: You're excused.

[WITNESS EXCUSED]

NEWSPAPER ARTICLES EXPOSING THIS INVESTIGATION

3-Year Inquiry Threads Together Evidence on F.A.L.N. Terrorism

By MARY BREASTED

The dynamite comes from the Southwest. The bombs go off in Manhattan, the Chicago Loop, the Newark Police Headquarters, the nation's capital. The bombers' notes call for Puerto Rican independence, but Mexican-Americans are among the suspects and subpoenaed witnesses.

Episcopal Church officials have received subpoenas for documents and, having complied, now wonder whether this breached the constitutional barrier between church and state. At the same time, church staff members and voluntary workers wonder who among them might be or once have been political terrorists or known of one.

These are some of the major elements in a tangled three-year investigation of Hispanic-American terrorism, one of the Federal Government's most difficult and extensive investigations, reaching into

New York, Chicago, Denver, New Mexico, Southern California and Puerto Rico. Details of the case are only now beginning to emerge.

It is a search for those who set 58 bombs or incendiary devices in the last three years, people who officials believe are members of the F.A.L.N., or Fuerzas Armadas de Liberación Nacional Puertorriqueña—the Armed Forces of National Liberation for Puerto Rico.

As the investigation proceeds, it focuses more intently on persons who served on the Episcopal Church's National Commission on Hispanic Affairs from 1971 through 1976.

The only known member of the F.A.L.N. was a member of that church commission, a quiet young man who served on its theological task force, helping to write a hymnal and book of religious texts in Spanish while, unknown to some of those who worked with him, he rented a Chicago apartment and—according to law enforcement sources—carried into it

Hispanic Panel of Church Is Focus of Terror Inquiry

Continued From Page 1

the materials for making F.A.L.N. bombs. So far the only person who has been charged is that young man, Carlos Alberto Torres. He is wanted on a Federal fugitive warrant and Federal charges of illegal possession of explosives.

Three other persons sought for questioning by the authorities have disappeared, and a fourth, also once on the Episcopal Church's Hispanic commission is a suspect in a dynamite theft and has been subpoenaed to appear before two grand juries working on the case, one in New York and the other in Chicago.

A detail that emerged about two weeks ago was the reaction of a dog trained to detect explosives when it was taken in the New York apartment of Maria Cueto, the former head staff member with the church Hispanic commission.

The dog, whose sense is regarded as highly reliable by police bomb squads but is of uncertain value in court, indicated that it smelled traces of dynamite in Miss Cueto's apartment. The dog's reaction is now being checked through laboratory tests of materials taken from Miss Cueto's apartment, law enforcement sources said.

Miss Cueto went to jail last month after Federal District Judge Marvin E. Frankel rejected her claims of a First Amendment religious privilege to refuse to testify before the grand jury here, and the United States Court of Appeals recently upheld his ruling. Before she turned herself over to Federal marshals, she told reporters that she knew nothing about the F.A.L.N.

Four Killed in One Blast

The most serious of the bombings for which the F.A.L.N. has taken responsibility—it has not done so for all 58 under investigation—was the blast at Fraunces Tavern in New York on Jan. 24, 1975. Four people were killed in that blast, and 55 others were injured.

Another blast that the group has said it set, a trap in an abandoned East Harlem tenement, blinded a young police officer in one eye and partially crippled one of his arms.

Most of the other F.A.L.N. bombings have damaged only property, exploding late at night inside or near government buildings, large banks or major corpora-

Continued on Page 45, Column 1

EXHIBIT "A"

Police photograph made in 1973 of Carlos Alberto Torres, who is being sought as a member of the F.A.L.N.

tion headquarters. The targets have been as various as the State Department Building in Washington, the Newark City Hall and Police Headquarters, the Standard Oil Building in Chicago and—last weekend here in New York—Macy's, Gimbel's and Bloomingdale's.

The demands, stated in typewritten notes left near the bomb sites, have consistently included Puerto Rican independence from the United States. Recent notes have also made dire threats if the cancer-stricken Puerto Rican terrorist, Andres Figueroa Cordero, is not released from federal prison before his death. He was sentenced to 81 years for his role in the 1954 incident in which five members of Congress were wounded when Mr. Figueroa Cordero and three other Puerto Ricans fired into the House chamber from a visitors' gallery.

Recent F.A.L.N. notes have also asked an end to the grand jury investigations.

Chance Discovery in Chicago

Law enforcement officials knew the identity of no one in the F.A.L.N. until the chance discovery last November by the Chicago police of what has come to be known as a "bomb factory" in the apartment rented by Mr. Torres.

Since then, the grand juries have been empaneled and investigators say they are encountering various degrees of cooperation. Six witnesses in Chicago are challenging their subpoenas, and the challenges are in litigation.

Miss Cueto's secretary, Raisa Nemikin, is with her in the Manhattan correctional facility, also jailed for having refused to answer the grand jury's questions. Both women had been granted immunity from prosecution.

Despite the unwillingness of these witnesses, various police and Federal sources have told the New York Times that they have pieced together the following evidence:

- The dynamite found in the Chicago apartment of Mr. Torres last fall was stolen last June from a Deer Creek, Colo., construction site.

- Other dynamite used in several bombs that failed to explode in Chicago and New York is believed to have been stolen from the Heron Dam site near Tierra Amarilla, N.M., in the late 1960's.

- A University of Colorado van used by a Mexican American student organization was photographed at more than one New York F.A.L.N. bomb site in October 1974 and was reportedly driven in New York about the time of those bombings by Ricardo Romero, a Denver Chicano

activist who had served on the church's Hispanic commission. The van smelled of explosives, the Denver police said, when it was returned to Colorado and inspected by a specially trained dog shortly after the bombings.

- A second batch of dynamite stolen from the Deer Creek construction site late last summer was recovered by the Denver police in the fall. The explosives were found hidden in a crypt in an old cemetery where Crusade for Justice members were working. (The Crusade for Justice, a Denver Chicano political and civil rights organization that has

received church commission funds, formerly employed Richardo Romero.)

- Nelson W. Canals, who served on the church commission's staff under Miss Cueto in 1974 and 1974, visited the four Puerto Ricans convicted of the shooting in Congress in 1954 and reportedly told his friends that he was concerned about them, especially about Mr. Figueroa Cordero. Travel records show that Mr. Canals made several trips between New York and San Juan shortly before and after the Fraunces Tavern bombing.

- Travel records of other church Hispanic commission members or employees correspond with the dates and sites of F.A.L.N. bombings.

First Major Clue

The discovery of the Chicago "bomb factory" was the first real lead in the case.

It happened, according to law enforcement sources, after a narcotics addict living in the same building saw Mr. Torres and a companion—identified as Oscar Lopez, who preceded Mr. Torres on the church's Hispanic commission—carrying giftwrapped packages into the apartment.

The addict waited until the apartment was untended, kicked in the door and found 211 sticks of dynamite in a foot locker and a nylon duffel bag, walkie talkies, scores of propane tanks, blasting caps, detonator cord, watches already wired to serve as timing devices and various other incendiary materials.

The addict started to sell the dynamite, and the Chicago police learned of the venture and made an undercover buy, law enforcement sources said. They arrested the addict, who led them to Mr. Torres' apartment.

They walked in on Nov. 3 without a search warrant. The next day, the F.B.I. obtained a search warrant and made its own assessment of the evidence.

The most interesting piece of material was not the dynamite, investigators have said, but an F.A.L.N. communiqué. Written on paper with the group's symbol—a five-pointed star with the letters imposed over it—the communiqué was the first hard evidence about the identities of people in the group.

A Frontier Airlines schedule for Chicago-to-Denver flights also found in the apartment bore the fingerprints of Oscar Lopez, law enforcement sources said, and fingerprints of Mr. Lopez's girlfriend, Lucy Rodriguez, were found on the giftwrap paper.

The Four Are Missing

Mr. Torres; his wife, Haydee Beltran-Torres; Mr. Lopez, and Miss Romero—all disappeared after the Chicago discovery and Federal investigators have been unable to trace them.

As the government presses its search for Mr. Torres and for the links between the Southwestern dynamite thefts and the F.A.L.N. bombs, it is proceeding on the theory that Mr. Torres and his friends in the F.A.L.N. used the church commission to cover their activities.

One former commission member, Pedro Archuleta of Tierra Amarilla, N.M., was named in a confidential law enforcement document last November as the prime suspect in the theft of the Heron Dam dynamite, which authorities believe turned up later in the F.A.L.N. bombs that failed to go off.

Mr. Archuleta, who has been subpoenaed to appear before both the Chicago and New York grand juries, declined in an interview to answer any questions about the F.A.L.N. or the church's Hispanic commission.

He said he thought his subpoenas stemmed from the bitter local politics of his area, in which he has taken the side of the leftist La Raza Unida Party against the local Democratic organization.

The local leader of the La Raza Unida Party, Moises Morales, who last fall ran unsuccessfully for sheriff against the Democratic candidate, has also been subpoenaed.

Both he and Mr. Archuleta have been asked to supply the Chicago grand jury with handprints, fingerprints, handwriting samples and voice exemplars. Why would their voice samples be wanted? "Well, some of the bombings were reported in telephone calls to the police here, and those calls were recorded automatically," a Chicago law enforcement official said.

Extensive Travel

Travel records obtained by the F.B.I. from the agency that arranged trips for commission members, Travel Arrangements Inc., show that commission members traveled extensively in the United States and to Puerto Rico between 1971 and 1976. Several present and former commission members interviewed by The New York Times said that their travels had been legitimate journeys to and from the quarterly commission meetings.

Church officials and commission members said that until this year, when the Hispanic commission was reorganized, the group had an annual budget of \$200,000 to \$400,000, used for projects helping poor Hispanics in various parts of the country as well as for commission members' travel expenses.

An Episcopal church spokesman said that records of the commission's grants had been locked up to prevent any tampering with what might become government evidence.

One of the questions that Raisa Nemikin, Miss Cueto's secretary, refused to answer before the New York grand jury was whether she knew of any commission funds that went to the F.A.L.N.

Partial records made available by the church showed that the commission had funded several projects that its own members were affiliated with. Among these were the Crusade for Justice in Denver, the Puerto Rican High School in Chicago and the Cooperativa Agrícola del Pueblo in Tierra Amarilla, for which Mr. Archuleta works.

Not only participants in these projects and commission members who approved the funding, but also law enforcement officials who have examined the projects in the course of their investigations have portrayed the efforts as beneficent, sometimes vital services.

The Tierra Amarilla cooperative spawned the founding of a clinic that provides low-cost medical care to poor Mexican-Americans in remote valleys near the Sangre de Cristo Mountains.

The Puerto Rican High School in Chicago, has a reputation as a serious institution that, while espousing a radical leftist philosophy, keeps unmotivated

students in school and sends most of its graduates to college.

Now, members of the church commission say they fear that their good works will be tainted by a connection in the public's mind between their programs and the F.A.L.N.

One of the accused was acquitted last week, and all charges against the second man were then dropped.

Violence has been common in the Chicano movement in the last decade, but what the bombing and shootouts in Chicano politics might have to do with the Puerto Rican independence movement is something that law enforcement authorities are still trying to determine. Police in Denver point out that an F.A.L.N. communique was printed in the October-November 1975 issue of El Gallo, a newspaper produced by Denver Chicano activists. The Denver police say they believe radicals there are supplying dynamite to groups elsewhere.

When Maria Cueto and her secretary

went to jail, they accused the grand jury and the F.B.I. of trying to thwart the Puerto Rican independence movement.

But the questions that the grand jury reportedly put to them were not about Puerto Rican independence, but about their last contacts with Mr. Torres, the Fraunces Tavern bombing and the possible flow of money from the church commission to the F.A.L.N.

Whatever the Federal investigators' suspicions are, it was clear from interviews with commission members that Maria Cueto was in a position, as chief staff member, to know more than anyone else about how other members were chosen for the commission. How, for example, was Oscar Lopez appointed as representative from the Chicago region? No one interviewed could recall.

In retrospect, some wondered aloud whether a clique of radicals had moved among them, doing the church's work in public while in private setting bombs.



Victims being aided moments after bomb blast at Fraunces Tavern in 1971

Donald Angel

NM Dynamite Reported Linked to Puerto Ricans

By WINTHROP QUIGLEY

Dynamite obtained in New Mexico found its way into the possession of a Puerto Rican terrorist group in Chicago which has claimed responsibility for 43 bombings that have killed four people, investigators have told the Journal.

Sources in New Mexico, Colorado, Illinois and New York say evidence indicates the existence of a nationwide cooperative network of Latinos which can provide arms, explosives, refuge and transportation out of the country to fellow Latinos.

A Chicago grand jury has subpoenaed several witnesses, including Rio Arriba County residents Pedro Archuleta and Moises Morales, to testify about bombings in the Chicago area which

the Puerto Rican group — FALN — claims it committed.

An out-of-state FBI agent, asked how New Mexico dynamite found its way to the FALN in Chicago, replied, "I guess that's what the grand jury is trying to find out."

Chicago police, after raiding an apartment occupied by FALN suspect Carlos Torres, found what they described as a "bomb factory" made up of dynamite stolen in the Denver area.

Torres has been underground since the raid in November. Denver detectives believe he fled first to Denver, then through Albuquerque to Mexico with the aid of Western Chicano activists. Torres is sought on a federal war-

Continued on A-2

EXHIBIT 1A

Dynamite, Puerto Rican Link Claimed

Continued from A-1

rant charging him with interstate flight to avoid prosecution.

It is a repeat, investigators said, of the escape of Alamosa, Colo., resident Frank Martinez, a lawyer, who in late 1973 was accused of trying to bomb four Denver restaurants and send bombs to Denver residents through the mail.

Martinez escaped to Mexico through Albuquerque from Denver, spent some time in Cuba, and was last rumored to be living in the Questa area, Albuquerque and Denver police said.

The presence of Colorado and New Mexico dynamite in Chicago, the facility, with which Latino fugitives have escaped police and other information are "very suggestive to law enforcement officers," a Chicago investigator said.

They believe that militant Latinos are informally and casually linked in most parts of the country through a cooperative network. Sources say it is not a conspiracy because the groups have no unifying philosophy or purpose but merely stand ready to help each other.

"These guys all know each other," a Denver investigator said. He said they share heritage, friends, in some cases philosophy and, in some cases even blood relationships.

The result has been that Eastern and Midwestern Latinos have managed to secure dynamite from Western Chicanos and aid from Chicanos in escaping police, the sources said.

If investigators do not know how Western dynamite got to the Puerto Ricans, they know why.

A Denver police officer said New Mexico and Colorado have extremely lax laws regarding use and possession of explosives and both states have plentiful supplies of dynamite.

Albuquerque police bomb unit officer John Kynor said if a dynamite user is not a mental incompetent, an addict or a convicted felon and is willing to fill out a federal form, he can buy whatever dynamite he wants.

Kynor, who knows about the FALN investigation but declined to discuss it, said the reason it is so easy to get is because many farmers, ranchers and small miners need it for legitimate reasons, such as blowing well holes, removing stumps and boulders and moving mountains.

her hand, he said, "It's impossible to get in New

Moreover, dynamite is so available and so poorly stored, it is easy to steal. Kynor said he and other officers found four cases of dynamite that had been left behind by miners when a northern New Mexico coal mine was closed.

"I'm sure we're not the only ones who knew about it," he added.

Dynamite was also stolen during several of Rio Arriba County's water projects, such as the Heron Dam, San Juan-Chama Diversion and Navajo Dam projects, investigators say.

Two Denver Chicano activists begin trial Monday on charges they attempted to blow up Denver police substations last year with dynamite stolen from a Denver-area quarrying operation.

Said Duke Short, an investigator with the Senate subcommittee on internal security, "One of the easiest things in the world to obtain is dynamite."

Morales, Archuleta and Chicago residents subpoenaed to appear before the grand jury have refused to testify, charging the jury does not adequately represent Latinos. A hearing on their motions last Monday was continued by Judge James B. Parsons until March 16.

Another grand jury, in New York, is investigating the possibility that Episcopal Church money was somehow channeled to the FALN.

The fugitive Carlos Torres last year served on the church's Hispanic Affairs Commission, a group designed to provide grants to deserving efforts to aid Latinos nationwide.

Pedro Archuleta was a member of the same commission until a year before Torres joined, church spokesman Walter Boyd said.

Two commission staff members, Raisa Nemikin and Maria Cueto of New York, refused to answer grand jury questions about Torres or where church money might have been spent. Both were ordered jailed by U.S. Dist. Judge Marvin Frankel.

FALN — which stands for Fuerzas Armadas Liberacion Nacional (Armed Forces of National Liberation) — wants to make Puerto Rico a separate nation. It has roots more than 25 years old.

Puerto Rican separatists first became an American problem when in 1951 Puerto Ricans tried to assassinate President Harry S. Truman. In 1954, when Puerto Rico became a commonwealth of the United States, terrorists stood up in the House of Representatives gallery and began firing automatic weapons at congressmen. Five people are still in American prisons in connection with those crimes.

An attorney for some of those subpoenaed in Chicago, Peter Schmiedel, said the grand jury is harassing his clients. "Ostensibly they are investigating the bombings by the FALN," he said, but the jury cannot connect his clients with the FALN and seeks only to silence some vocal Chicago Puerto Ricans.

FALN has claimed credit for 43 bombings in the past three years in New York, Washington, D.C., Chicago and Newark. The worst was the January 1975 bombing of New York's Frances Tavern where four people were killed and 55 injured.

Another bomb set off in New York was followed by a FALN communication demanding the grand jury probes be halted.

Santa Fe attorney Tony Lopez, representing Archuleta and Morales, has joined the Chicago lawyers in motions to quash the grand jury subpoenas. He has directed his clients not to talk to reporters.



TRANSCRIPT OF PROCEEDINGS, NORTHERN DISTRICT OF ILLINOIS
12-1-77

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Letter of:

JURY SUBPOENAS OF
RUBEN LOPEZ,
ANTONIO LOPEZ and
LOPEZ,

Petitioners.

No. 76 GJ 1128

Dec. 1, 1976

TRANSCRIPT OF PROCEEDINGS

Before

HON. JAMES B. PARSONS

Chief Judge

Exhibit 2

JOSEPH R. DELO

Official Reporter

to investigate?

THE COURT: Yes.

MR. MARGOLIS: Certainly, to investigate and --

THE COURT: Upon what do you rely on that?

MR. MARGOLIS: Costello, your Honor. The duty of a grand jury is to investigate and to gather evidence and where probable cause to return an indictment is present, to return such an indictment.

THE COURT: How does the grand jury go about investigating?

MR. MARGOLIS: By virtue of its subpoena power, your Honor. The grand jury has the power to compel testimony and the grand jury has the power to compel the production of documents. That is the only tool --

THE COURT: How much --

MR. MARGOLIS: I am sorry.

THE COURT: How much does this grand jury know about the subpoena?

MR. MARGOLIS: These particular subpoenas?

THE COURT: Yes.

MR. MARGOLIS: Your Honor, at approximately ten o'clock this morning I met with the Special February 1975 Grand Jury. At that time I discussed with them these three subpoenas individually, discussed with them the information before that grand jury which related to these three people and which related to the investigation of Carlos Alberto Torres,

who is now a federal fugitive and who is an investigative concern of the grand jury.

THE COURT: May I inquire again?

MR. MARGOLIS: Of course, your Honor. You are the Chief Judge.

THE COURT: No; you're a brilliant lawyer, too, Mr. Margolis, and I just want to know:

Before the subpoenas were issued did the grand jury suggest that these subpoenas be issued?

MR. MARGOLIS: These particular subpoenas?

THE COURT: Yes.

MR. MARGOLIS: No, your Honor.

THE COURT: They didn't know anything about these people until this morning?

MR. MARGOLIS: They knew about the area of inquiry. They did not specifically ask me to subpoena these individuals for this morning.

THE COURT: Did they have any information which would have justified their asking before the subpoenas were issued?

MR. MARGOLIS: Oh, certainly, certainly, and this morning I discussed with them in detail the nature of that information, and then received instructions from them as to how to report to the Court on their behalf.

THE COURT: But before the subpoenas were issued what information did they have?

MR. MARGOLIS: I am quite hesitant, your Honor, to discuss in open court the testimony --

THE COURT: Did they have information? That's the question rather than what did they have.

MR. MARGOLIS: The grand jury, your Honor, prior even to the discovery of this bomb factory, as it has been called in the media, was involved in this grand jury investigation, the grand jury number was on record before that bombing factory was found, and a number of subpoenas, both personal subpoenas and subpoenas duces tecum, were issued.

THE COURT: Were they issued by the grand jury?

MR. MARGOLIS: Yes.

THE COURT: At the grand jury's request were they sent out?

MR. MARGOLIS: I reported to them -- not each individual subpoena, your Honor, is specifically requested prior to its issuance.

THE COURT: Did the grand jury at the time the subpoenas issued for Miss Lopez and Mr. Lopez and the other Mr. Lopez -- at that time did they have information which included the names of these three people?

MR. MARGOLIS: I am not sure, your Honor. I don't recall these three specific names being mentioned.

THE COURT: The real issue that is raised by this young man -- you have a managerial responsibility in your office,

it is a very serious one, and I have a judicial responsibility here, and I have been seeing on the horizon the very possibility that someone was going to raise this issue in some case. Well, it's raised here.

Don't you think you would want to file an answer to this and let me continue this subpoena until you can answer it and file your affidavits and really go into it, rather than to have me rule summarily one way or the other?

MR. MARGOLIS: I am prepared, your Honor, to present orally to the Court what I would later today put in affidavit form.

Since I received the motion yesterday, I was not able to meet with the grand jury and discuss it with them and read them the motion until ten o'clock this morning. I am prepared to orally state to the Court what the foreman stated to me and instructed me to report to the Court about the nature of their inquiry, the purpose of their inquiry, and if the Court wishes me to present that orally I could follow it up in a few moments with an affidavit once I have the opportunity to prepare it.

THE COURT: I will hear what message the foreman sent, of course.

MR. MARGOLIS: Your Honor, this morning I discussed the particulars of the three subpoenas issued to the three movants this morning, I read for the foreman and the grand

jury the motion to quash the subpoenas which has been presented and is now being heard by the Court.

The foreman of the grand jury instructed me to tell the Court in substance, and I have not yet had it reduced to transcript, that the grand jury is not investigating political beliefs or political activities or free speech or thoughts of people subpoenaed before it, on the contrary, the grand jury is investigating a variety of allegations of Title 18 which relate to the unlawful transportation, possession and use of explosives and unlawful bombing activities which have been committed in this district.

To that end the grand jury authorized me to tell the Court that they would like these three witnesses to appear before them and give testimony and if these people have knowledge of the activities which are subjects of the grand jury investigation, and that being violation of Title 18 of the United States Code, let their answers stand.

The grand jury foreman instructed me to tell you that the grand jury does not intend to question these three people about their beliefs or their ideas or their patterns of speech. It is a criminal investigation, your Honor.

THE COURT: When did the grand jury come to that decision?

MR. MARGOLIS: That particular decision? The issue was not -- the motion was not presented to them until ten o'clock this morning, and at about ten after ten their position was

made clear.

The Title 18 investigation has been continuing, I'm not sure the date it was opened but it is for a period of months, and it significatngly predates the discovery of this bomb factory, and I might add that when witnesses were called before the grand jury, as best I can recall, each of them was advised, "This grand jury is investigating allegations of Title 18, which relate to explosives and bombing."

THE COURT: How long would you need to file an answer or an opposition to this motion to quash and support it with a brief and affidavits?

MR. MARGOLIS: Two days.

THE COURT: You can do it in two days?

MR. MARGOLIS: Shall we continue the subpoenas until next Wednesday?

THE COURT: I think we are going to have to continue the subpoenas in order to have time to look into it. You say you can do that in two days?

MR. MARGOLIS: Yes, your Honor.

THE COURT: Today is the 1st.

MR. MARGOLIS: Well, perhaps I ought to take until Monday, your Honor, on reflection. Counsel apparently had the motion filed a week ago --

THE COURT: Never offer to file a pleading on Friday.

AFFIDAVIT OF AUSA THOMAS ENGLE, FEBRUARY, 1977
IN THE CASE OF CUETO AND NEMIKIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE GRAND JURY
SUBPOENAS SERVED ON
MILTON L. WOOD, JOHN
H. ALLIN, MARIA CUETO,
and RAISA MEMIKIN

AFFIDAVIT

77 Cr. Misc.
(M 11-183)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

THOMAS E. ENGEL, being duly sworn, deposes and
says:

1. I am an Assistant United States Attorney in the Office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York and am assigned to conduct the grand jury investigation of terrorist bombing activities by a group known as the FALN. The grand jury that originally considered these activities was impaneled in April, 1975 and expired in October, 1976, and the present grand jury was sworn in November 9, 1976 and is continuing the investigation of the bombings.

2. In connection with the grand jury's investigation of these bombings, I caused grand jury subpoenas to issue to Bishop Milton L. Wood, Bishop John M. Allin, Maria Cueto, and Raisa Memikin. These subpoenas were served by Special Agents of the Federal Bureau Investigation.

3. On November 18, 1976 Special Agent, Henry Garcia interviewed Bishop Milton L. Wood of the Episcopal Church Center, 815 Second Avenue, New York, New York. Bishop Wood stated that the Executive Council of the Episcopal Church desired to cooperate fully with the FBI in helping to located Carlos Torres.

EXHIBIT 3

On November 19, 1976 ~~Mr.~~ W. Saleeby, Controller of the Episcopal Church Center, with authorization by Bishop Wood, made available to the FBI travel records of the NCHA concerning Carlos Torres.

5. On November 22, 1976 Bishop Wood made available to the FBI personnel records of the National Commission on Hispanic Affairs ("NCHA").

6. On or about December 1, 1976 Bishop Wood was served with a subpoena duces tecum set forth as Exhibit "F" to the motion to quash by Ms. Cuato and Ms. Nemikin. On the same date Mr. Saleeby furnished expense records of Benjamin Ortiz, the Reverend Carlos Plazas, Ralph Campbell, Sr., Leticia Romero, and Pedro Archuleta, Lydia Lopez, Jaime Rodriguez, Leticia Aponte, Leticia Romero, Ricardo Romero, Julio Rosado, and Nelson W. Canals.

7. On December 20, 1976 Bishop Wood was again interviewed by FBI agents and was fully cooperative with the agents. In addition, he stated that Lydia Lopez was the only Episcopalian to his knowledge who is a member of the NCHA. In addition, Iris Wadsworth, a secretary of the Episcopal Church Center, was interviewed by FBI agents and was fully cooperative as was Terry Adair who was interviewed in his capacity as being in charge of purchase orders and maintenance of the Center.

8. At no time did Bishop Wood or the employees Saleeby, Wadsworth, and Adair raise objection to being interviewed or supplying documents either upon request or pursuant to subpoena. The material furnished by Bishop Wood and his staff fully complied with the requirements of the subpoena, and accordingly the subpoena is not presently

9. The subpoena duces tecum addressed to Bishop

01-1000 Allin or any Authorized Officer or Employee of the NCHA was withdrawn as to him, by letter of January 20, 1977 to Kenneth W. Greenwalt counsel for Bishop Allin. A copy of this subpoena was also served on Maria Cueto and by letter of January 20, 1977 to her counsel was similarly withdrawn. The subpoena to Bishop Allin is therefore, not presently outstanding.

10. The testimonial subpoenas directed to Ms. Cueto and Ms. Heniklin have been adjourned sine die pending resolution of the present motions.

11. Bishop John M. Allin has informed agents of the FBI that the NCHA was being disbanded at the end of January, 1977. This information has been confirmed by counsel for Bishop Moore and is thus not in dispute.

WHEREFORE, and for the reasons contained in the accompanying Affidavit of Thomas E. Engel, and the transmission therewith of the Grand Jury testimony of Special Agent Louis J. Vizi of the Federal Bureau Investigation, and which Affidavit and testimony the Government has requested be sealed, and the accompanying Memorandum of Law, the Government respectfully requests that the motions to intervene and quash be denied.

THOMAS E. ENGEL
Assistant United States Attorney

Sworn to before me this
day of February, 1977

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

A F F I D A V I T

JEREMY D. MARGOLIS, having been duly sworn on oath,
deposes and says that:

1. He is an Assistant United States Attorney for the Northern District of Illinois and is assigned to Grand Jury investigation 76 GJ 1128 before the Special February 1975 Grand Jury for this District. 76 GJ 1128 is concerned with a series of terrorists bombings which have occurred in the City of Chicago in recent years, the commission of which has been claimed by or associated with a group which calls itself the FALN.

2. In connection with 76 GJ 1128, a testimonial subpoena and a physical evidence subpoena have been served upon Pedro Archuleta. In connection with those subpoenas a number of grand jury and district court appearances by myself, by Mr. Archuleta, and by his counsel have been made.

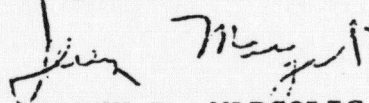
3. Attached to this affidavit and marked Exhibit A is a two page portion of the transcript which resulted from Mr. Archuleta's December 15, 1976 appearance before the Special February 1975 grand jury.

EXHIBIT 7

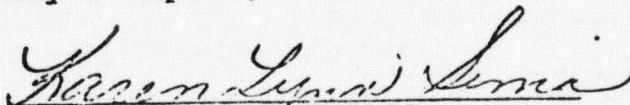
4. During District Court proceedings which have occurred in connection with these subpoenas, Pedro Archuleta has at various times been referred to as a witness by counsel for both sides and by the Court.

5. In connection with these proceedings, the Government filed a Petition for Judgment and Commitment based upon Archuleta's refusal to obey the order of the Chief Judge that certain items of physical evidence be provided the grand jury. A ruling on that petition now awaits the Court's resolution of Archuleta's motion challenging the grand jury array. This latter motion is currently under advisement, evidence having been taken, pleadings having been filed and summaries having been submitted by both parties.

Respectfully submitted,


JEREMY D. MARGOLIS

SUBSCRIBED AND SWORN
to before me this 28th
day of April, 1977


NOTARY PUBLIC

12/15/76

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THE FOREMAN: Would you please raise your right hand?

PEDRO ARCHULETA: I refuse to take the oath.

MR. MARGOLIS: Are you Pedro Archuleta?

PEDRO ARCHULETA: Yes, sir.

MR. MARGOLIS: Mr. Archuleta, my name is Jeremy Margolis. I am an Assistant United States Attorney.

You are appearing pursuant to subpoena before the Special February 1975 Grand Jury for the Northern District of Illinois. You understand that, don't you?

MR. ARCHULETA: Yes.

MR. MARGOLIS: Mr. Archuleta, let me advise you what has already been communicated to your counsel, Joan Friedland. This Grand Jury is investigating a variety of allegations of violations of Federal criminal law, which relate to the unlawful use, transportation, and possession of explosives, and also violations of Federal law with respect to certain bombings that have been committed in this district over the last few years.

Do you understand that?

MR. ARCHULETA: Yes.

MR. MARGOLIS: In connection with that investigation, Mr. Archuleta, it is my duty to advise you that you are a possible subject of this Grand Jury investigation, and because of that, I should advise you of certain constitutional rights that you have.

The first is that you have the right to remain silent, and anything you say before this Grand Jury can be used against you in a court of law.

You have the right to an attorney, and you, of course, have counsel. And if you didn't have counsel, because you couldn't afford it, counsel would be provided for you at no cost, provided by the court.

If you elect to answer certain questions, and selectively refuse to answer certain questions, because those certain questions may incriminate you, you can selectively pick and choose the questions which you would answer and those which would incriminate you. Do you understand that?

MR. ARCHULETA: I do.

MR. MARGOLIS: Now, you are represented by counsel today, is that correct?

MR. ARCHULETA: Yes, sir.

MR. MARGOLIS: And her name is Joan Friedland?

MR. ARCHULETA: Yes.

MR. MARGOLIS: And she is outside the Grand Jury Room now?

MR. ARCHULETA: Yes.

MR. MARGOLIS: And you understand that at any time you can leave the Grand Jury Room and consult with her, if you feel the need.

MR. ARCHULETA: Yes.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the
Subpoena Served upon
PEDRO ARBUJOLA.

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

THOMAS E. ENGEL, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the Office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York and am in charge of the grand jury investigation into terrorist bombings that have taken place since late 1974, the credit for which has been claimed by a group calling itself the FALN. I make this affidavit in opposition to the motion to quash the grand jury subpoena served upon Pedro Arbujola and in response to certain matters raised in papers denominated "Offer of Proof in Support of Motions to Quash" (the "Offer of Proof").

2. To the extent that the article by Mary Breslin in the April 17, 1977 edition of the New York Times regarding the FALN stated that some information therein came from federal sources somewhere in the United States, the Government is not in a position, as was stated in court proceedings on April 22, 1977, to deny (or to confirm) the truth of that assertion.

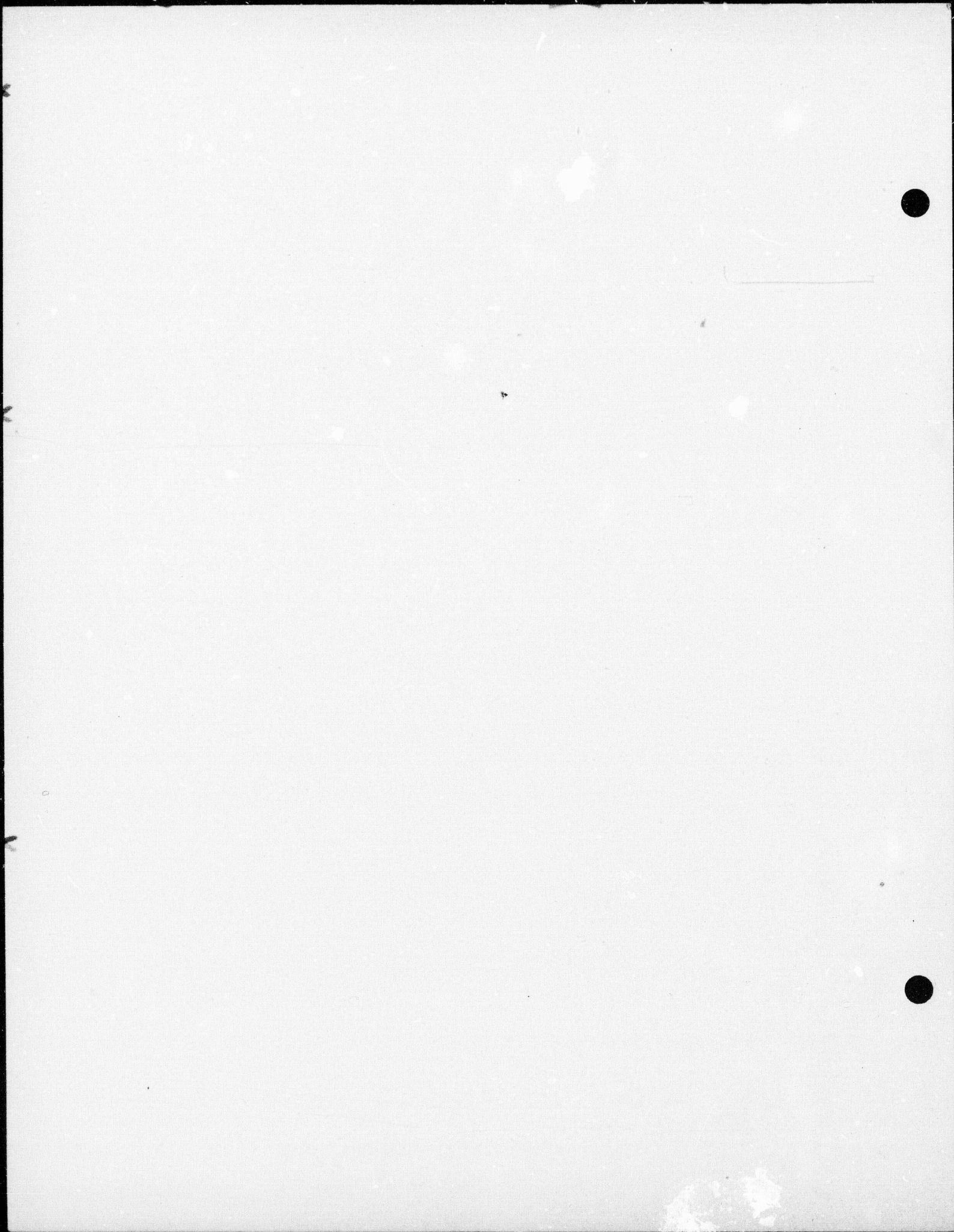
EXHIBIT 6

E:cf
/5-1563

representations made by the Government with respect to Mr. Archuleta's status as a witness before the grand jury in Chicago (Margolis Affidavit 15; Exhibit A to Margolis Affidavit at 19, final ¶), and (2) the matters that are currently sub judice before the Honorable James B. Parsons, Chief Judge for the United States District Court for the Northern District of Illinois (Margolis Affidavit 15).

THOMAS E. ENGEL
Assistant United States Attorney

Sworn to before me this
day of May, 1977



AFFIDAVIT OF CUETO AND NEMIKIN
ATTORNEY MARGARET RATNER

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STATE OF NEW YORK)

COUNTY OF NEW YORK)

1. I am one of the attorneys for Maria T. Cueto and

2. Ms. Cueto was the National Director of the National Commission on Hispanic Affairs of the Domestic and Foreign Missionary Society of the Protestant Episcopal Church and Ms. Nemikin was the Executive Secretary. They were subpoenaed, according to the government, to produce a funding proposal from a church in San Antonio, Texas, which was submitted to the Commission and dated February 3, 1975, was for an apartment in Chicago that allegedly was leased by Roberto Torres. Torres, it came to the government's attention, had not been a member of the Commission.

3. Further, according to the government, a grand jury was impaneled on November 9, 1976 to continue the work of an expired grand jury and "investigate, among other things, the Fraunces Tavern bombing and several other terrorist bombings for which the FALN had also claimed responsibility" (See Statement of Facts to Government's Brief to the Second Circuit, page 2, attached hereto and made a part hereof as Exhibit "A"). It was to this grand jury that Cueto and Nemikin were subpoenaed.

EXHIBIT 4

4. On information and belief, the dominant purpose for subpoenaing Cueto and Nemikin was to discover the whereabouts of Torres. This belief is based on the following: 1) the nature of the F.B.I. interview of Cueto and Nemikin (Copies of affidavits concerning these interviews are attached hereto and made a part hereof as Exhibit "B"); 2) the nature of the questions asked of other persons at the Church offices in New York by the F.B.I.; 3) the government's statement of facts (see pp. 2-4 of Exhibit "A"); 4) the March 25, 1977 statement of Assistant U.S. Attorney Engel, made during oral argument to the United States Court of Appeals for the Second Circuit, admitting in response to Cueto's and Nemikin's allegation that the clear purpose of the Southern District investigation was to find Torres, that the current grand jury was seeking Torres, however, stating that Torres was wanted as a "witness;" 5) the questions propounded to Cueto and Nemikin before the grand jury (see pp. 8 and 11 of Exhibit "A"); and 6) the wanted poster for Torres which has been distributed by the F.B.I. (See Exhibit "C" attached hereto and made a part hereof).

5. I have been informed that PEDRO ARCHULETA has been subpoenaed to the same grand jury and that he was previously subpoenaed to a grand jury in Chicago

6. Upon information and belief, the grand jury sitting in New York is conducting the same investigation as is the grand jury in Chicago. The sources of my belief are as follows: 1) the statement of Assistant U.S. Attorney Jeremy Margolis, the U.S. Attorney in charge of the Chicago grand jury to Michael Deutsch, Esq. (one of the lawyers for the Chicago subpoenaees) that the purpose of the grand jury in Chicago is "to investigate the bombings and the fugitive status of Carlos Alberto Torres" and that a witness had been subpoenaed to it because "we want to see

if she knows anything about the whereabouts of Carlos Alberto Torres."

2) The identity of other persons subpoenaed in Chicago and their relationship to the National Commission on Hispanic Affairs;

3) the meeting in Chicago between Mr. Engel and Mr. Margolis immediately before my clients' motion to quash was adjudicated and which was the cause of an adjournment of my clients' subpoenas and a hearing on their motion to quash.

4) the statement of Samuel K. Skinner, United States Attorney for the Northern District of Illinois, stating that the grand jury is investigating "possible violations of Title 18, United States Code, which relates to the unlawful use, transportation and possession of explosives, as well as the commission of a number of bombings." (See Exhibit "D")

5) the fact that both grand juries began their investigation after the discovery of a so-called bomb factory in Chicago.

6) an affidavit of Assistant U.S. Attorney Engel submitted in opposition to Cueto and Nemikin's motion to quash their subpoenas in which he stated: "I am assigned to conduct the grand jury investigation of terrorist bombing activities by a group known as the FALN." (See Exhibit "E")

7) the questions asked of Jose Lopez before the Chicago grand jury which were about Carlos Alberto Torres and the Chicago apartment.

8) numerous other statements in document form and in open court where the Assistant U.S. Attorneys in both districts describe the purposes of the grand juries in similar terms.

7. Further affiant sayeth not.

Margaret L. Ratner

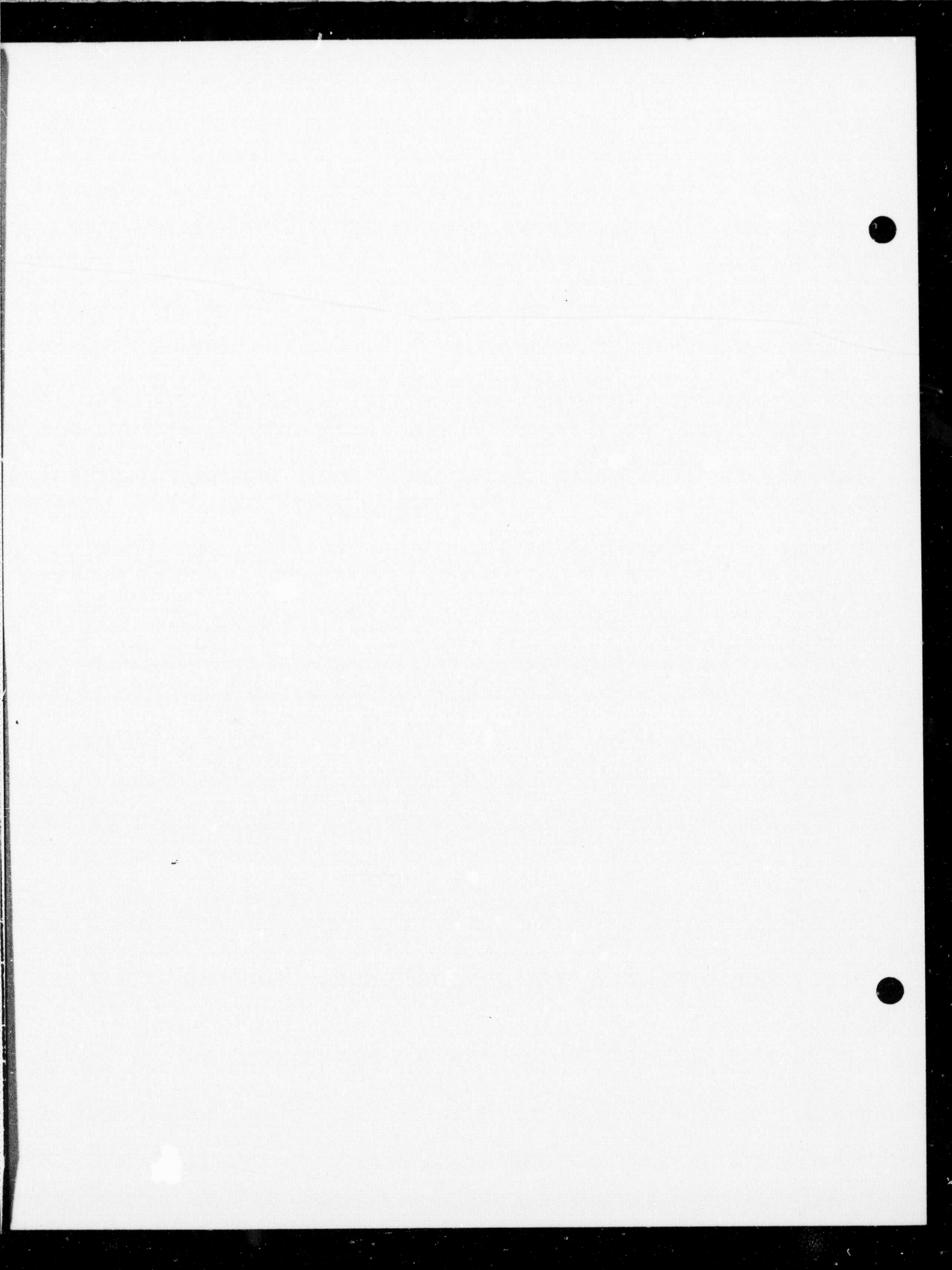
MARGARET L. RATNER

Sworn to before me this

3rd day of April, 1977

Jose L. Vazquez
NOTARY PUBLIC

JOSE ANTONIO LUGO VAZQUEZ
Notary Public, State of New York
No. 31-4001007
Qualified in New York County
Certificate filed in Kings County
Commission Expires March 30, 1978





AFFIDAVITS OF NORTHERN DISTRICT OF ILLINOIS
AUSA JEREMY MORGOLIS AND AUSA ENGLE DISCLOS-
ING CHICAGO GRAND JURY MINUTES

1 what information --

2 A It would be the name of the individual overheard, the
3 date of the overheard and the source of the overheard.

4 Q What do you mean by source of overheard?

5 A The identifier as to the -- it's a code symbol number
6 to the electronic device whereby they were overheard, over
7 which they were overheard.

8 If it were a telephone, it would
9 be a code symbol designating a telephone.

10 Q Is that the only information that is contained on these
11 cards?

12 A That is all.

13 Q Is that the only information that you have?

14 A That I have?

15 Q Yes. In your indices do you have any back-up informa-
16 tion to the information contained on the 3x5 card?

17 A In some instances there might be some specific identifier
18 relative to the individual overheard. Not very often, but
19 ever once in a while the agent who has prepared the card may
20 put down the name of a company or something like this, some
21 type of identifying data relative to the individual who was
22 overheard.

23 Q Can you tell from looking at the card who the agent is
24 who conducted the overheard?

25 A No, no, I can only tell which field office it was that

1 conducted the surveillance.

2 Q That is reflected on the card then?

3 A That's contained within the code symbol.

4 Q The code symbol lets you know what sort of surveillance
5 it was and lets you know --

6 A No, it does not tell me what sort of surveillance it
7 was.

8 Q Tell me, then, what does the code symbol let you know?

9 A It tells me the field office that conducted the sur-
10 veillance and the code number that that field office is
11 utilizing to identify the source.

12 Q Do you know how to decode the field office code number?

13 A No. Well, I can tell if it is a security surveillance
14 or if it is a criminal surveillance.

15 Q Criminal meaning the FBI is acting criminally or the
16 FBI is investigating a crime?

17 A If it involves a specific electronic
18 surveillance of an individual involved in a criminal
19 activity.

20 Q I see. Can you tell from looking at the 3x5 card
21 whether the surveillance with which you're dealing is
22 authorized by court order or not?

23 A I can tell if the -- if it's a title 3. I can tell
24 if it's under title 3.
25

1 Q Could you describe briefly what you mean by "If it's
2 under title 3," you can tell.

3 A Title 3 is the Omnibus Crime Control and Safe Streets
4 Act of 1968 whereby a procedure for court-authorized elec-
5 tronic surveillance was established by Congress and specific-
6 ally--

7 Q How can you tell if it's a title 3 tap?

8 A Because it's on a blue card.

9 Q What other color cards are there?

10 A White.

11 Q Only blue and white?

12 A Blue and white.

13 Q So if you have a white card, you know it's not a title 3
14 tap; is that right?

15 A It's a security tap.

16 Q If you have a white card, you know it's not a title 3
17 tap; is that correct?

18 A That's correct.

19 Q Do you know what kind of tap it is?

20 A Pardon me? If it's what?

21 Q If it's on a white card, what kind of tap is that?

22 A An intelligence security tap.

23 Q What do you mean by "An intelligence security tap"?

24 A It's one that is conducted in the area of intelligence
25 or national security.

1 Q From looking at that white card you cannot tell whether
2 that is a court-ordered tap or not; is that right?

3 A No, I cannot.

4 Q Where do you get your information, Mr. Smythe?

5 A Where do I get what information?

6 Q The information that comes into those indices?

7 A In the cards?

8 Q Right.

9 A From the field office.

10 Q From the field office. Is it telephoned in to your
11 office?

12 A No.

13 Q Do they make up the cards and send them in?

14 A That's correct; they make up the cards and send them in.

15 Q How many field offices send information into your
16 department?

17 A How many do on a regular basis?

18 Q Right.

19 A I can't tell you.

20 Q Are all of them supposed to, if they conduct taps?

21 A All of them are supposed to; that's correct.

22 Q Do you know whether all of them do?

23 A I have no way of knowing.

24 Q Who would know?

25 A Who would know --

1 Q Whether all the field offices send information in to
2 you about taps?

3 A Only the field office. Only the specific field office
4 itself.

5 Q To the best of your information, when a field office
6 sends you a card, does the field office keep a copy of the
7 card?

8 A That's correct.

9 Q Does the field office send you anything except the
10 card?

11 A Nothing else.

12 Q Do you know, Mr. Smythe, how many field offices were
13 involved in any aspect of the Patricia Hearst investigation?

14 A 53.

15 Q Of those field offices, do you know how many sent cards
16 in to your office?

17 A None.

18 Q None. Do you know of those 58 field offices how many
19 maintained cards in their field offices relative to wire-
20 tapping?

21 A Relative to any wiretap?

22 Q Right.

23 A No, I couldn't give you a specific number.

24 Q Do you know of those 58 field offices how many main-
25 tained cards relative to wiretaps conducted in the course of

1 the Patricia Hearst investigation?

2 A There are none.

3 Q Do you know that? How do you know that?

4 A How do I know what?

5 Q How do you know that among--from all of those 58 field
6 offices there are none which maintained cards describing
7 wiretaps conducted in the Patricia Hearst investigation?

8 A There have been no wiretaps.

9 Q I thought all you had was--

10 A Wait a minute.

11 Q --the cards that were sent you.

12 A That's correct. Based upon the cards sent in.

13 Q Right. From your information, there are no wiretaps.

14 A That's correct.

15 Q That's your position.

16 A That's correct.

17 Q Now, I am asking you to step back a bit and tell me
18 whether there are wiretaps where the records are maintained
19 only in those field offices?

20 A I can't answer that.

21 Q Who could answer that?

22 A The specific field office.

23 Q The information which comes to your office, is that
24 information relative only to FBI-conducted wiretaps?

25 A That's correct.

1 Q What about information which comes from wiretaps con-
2 ducted by other agencies and transmitted to the FBI?

3 A No, we get --

4 Q Does your office maintain a record of that?

5 A No, we do not.

6 Q So that, for instance, if the Bureau of -- what is it? --
7 Tobacco, Alcohol and Firearms had maintained a tap in the
8 Patricia Hearst investigation, and the FBI had been given
9 information resulting from that tap, your office would not
10 be able to say whether or not there had been that tap?

11 A That's correct. Uh-huh.

12 THE COURT: But you say that you maintain
13 no cards if another agency sent in wiretap information to
14 your office?

15 THE WITNESS: No, we would not have cards on
16 it because we did not conduct the wiretap.

17 THE COURT: All right.

18 Q Now, Mr. Smythe, you testified before to the Court of
19 information that's--that's on a 3x5 card. There is no topi-
20 cal indexing of those cards; is that correct?

21 A That's correct.

22 Q So that there might, in fact, be wiretaps conducted in
23 the course of the Patricia Hearst investigation which you
24 wouldn't be able to turn up because you didn't recognize the
25 name of the person overheard; is that correct?

1 A By just looking at the cards, I could not make a deter-
2 mination relative to that.

3 Q So you are not in a position to say that there has been
4 no wiretapping conducted by the FBI in connection with the
5 Patricia Hearst investigation; are you?

6 A I am.

7 Q How are you?

8 A Because I did further review of records relative to
9 this matter.

10 Q Was that before or after the August 2nd affidavit?

11 A Before.

12 Q What was that search of records, review of records?

13 A A search of the general indices and a review of all file
14 references.

15 Q The general indices of what and all file references?

16 A Of FBI headquarters.

17 Q The general indices including wiretap and everything
18 else?

19 A And everything else.

20 Q And what did you discover when you did your search of
21 the general indices?

22 A That there was no information relative to any wiretap-
ping relative --

Q What did you look for?

A What did I look for?

1 Q Right. How did you set about to look for that? How
2 are those indices arranged?

3 A They are by name.

4 Q By name of?

5 A The individual.

6 Q So what names did you use in this search?

7 A Jay Weiner and Phillip Shinnick.

8 Q Now, those are the only names you used?

9 A Phillip Kent Shinnick.

10 Q Jay Weiner?

11 A Yeah.

12 Q Phillip Kent Shinnick?

13 A That's correct.

14 Q Those are two names that you looked through the general
15 indices for? Is that right?

16 A Yes.

17 Q Did you look for any other names?

18 A No. Relative to these two men? Relative to Weiner and
19 Shinnick?

20 Q You just stated that you did a review of records before
21 you prepared this affidavit.

22 A That's correct.

23 Q Now, who asked you to do this affidavit?

24 A The Department of Justice.

25 Q Do you know specifically who asked you to do it?

1 A Yes.

2 Q Who was that?

3 A Brandon Alvey.

4 Q And what information--who is Brandon Alvey?

5 A He's an attorney at the Department of Justice.

6 Q What did Brandon Alvey ask you to look for?

7 A Any indication of electronic surveillance, legal or
8 illegal, consensual or non-consensual.

9 Q Pertaining to?

10 A These two individuals. Jay--

11 Q Did he ask you to look and see whether there's been any
12 electronic surveillance, legal or illegal, conducted in the
13 course of the Patricia Hearst investigation?

14 A Not specifically.

15 Q Now, the indices--the general indices are maintained in
16 the same general fashion as the indices that are under your
17 supervision?

18 A Yes.

19 Q By name?

20 A By name. They have other--there are different things--
21 different indexable items that they would have in there, but
22 I am not familiar with the general indices. I don't work it,
23 so I am not really an expert at it, so I can't exactly tell
24 you how they index everything.

25 Q So there might have been information about Jay Weiner or

1 Phillip Kent Shinnick only you didn't have the tools to re-
2 trieve it; is that right? You didn't know how the general
3 indices worked?

4 A No, that's not correct.

5 Q I thought you just said you weren't an expert at those
6 indices.

7 A No. I didn't do the search of the general indices.

8 Q You did not personally do that?

9 A No, I did not personally do that.

10 Q I thought your affidavit said that you did.

11 A I said I conducted a search of the electronic surveill-
12 ance indices.

13 Q Oh, I see. "I have also caused a search to be made
14 of the general indices." Who made that search?

15 A The personnel of the general--of the--that handled the
16 general indices.

17 Q You didn't make the search. You are not in a position
18 then to say, from your own personal knowledge, whether there
19 was information relevant to electronic surveillance of these
20 two men contained in those general indices; is that right?

21 A I caused the search to be made, and, based upon the
22 information provided to me.

23 Q Do you know how that search was made?

24 A I--

25 Q I beg your pardon?

1 A What do you mean by "how it was made"?

2 Q Do you know whether the person or persons who conducted
3 that search did anything except look under the names of
4 these two men?

5 A I'm sure that's the way they did it.

6 Q But you don't know for sure what they did?

7 A That's what they did.

8 Q How do you know?

9 A I was not there with them but that is the procedure.

10 Q But you don't know what they did; is that right?

11 A That's correct.

12 Q Now, in the general indices, do you know whether there
13 is also topical indexing?

14 A No, I don't.

15 Q Did you ask the person or persons who did the search
16 of the general indices to check under topical indexing?

17 A No.

18 Q For information relative to these two men?

19 A No.

20 THE COURT: Well, did you say
21 indices?

22 MISS MAGUIGAN: Topical .

23 THE COURT: Are there topical indices?

24 THE WITNESS: There would be in certain in-
25 stances, but only if a code name or something had been given
to a specific investigation.

1 Q Was a code name given to the Patricia Hearst investi-
2 gation or any aspect of it?

3 A Yes.

4 Q What's that code name?

5 A HERNAP.

6 Q Her nap?

7 A HERNAP.

8 Q HERNAP. Did you ask the person or persons who checked
9 the general indices to look under HERNAP?

10 A No, I didn't.

11 Q Now, you testified earlier that the information on your
12 cards, the blue and the white ones, are by name of person
13 overheard; is that correct?

14 A That's correct.

15 Q Full name?

16 A That's correct.

17 Q Maintained alphabetically?

18 A That's correct.

19 Q According to last name?

20 A That's correct.

21 Q What does your agency do if there is an overhear of a
22 person whose last name is not stated during the overhear?
23 How do you index that tap?

24 A It's not indexed.

25 Q It's not indexed.

It might be topically indexed;

1 is that correct?

2 A Negative, no. It would not be.

3 Q It would not even be --

4 A Not in the electronic surveillance indices.

5 Q What about in the general indices?

6 A No, it wouldn't be.

7 Q Why not?

8 A Because the electronic surveillance overhears are not
9 placed in the general indices.

10 Q I see. I see.

11 What about a tap on, say, John
12 Jones' telephone in which someone called up and said, "Hi,
13 John. This is Mary," giving no last name. How is that
14 indexed?

15 A It's not indexed.

16 Q It's not indexed at all?

17 A No, not in the electronic surveillance indices or in
18 the general indices. It may be indexed in the field office.
19 It's an unidentified person and, therefore, until the person
20 is identified--now, if Mary is identified as Mary Jones,
21 then the card is sent in to the electronic surveillance
22 indices.

23 Q Now, let me get a couple things straightened out. What
24 about John Jones? Would it be indexed in your office under
25 that?

1 A Yes, it would.

2 Q But if I represent Mary Smith and I want to know about
3 a tap in which she has been overheard, I have to ask you for
4 John Jones to find that out; right?

5 A (no audible reply)

6 Q Assuming that the conversation on John Jones' phone was
7 "Hi, John, this is Mary." Is that right? In order to get
8 to the tap of Mary's conversation, I would have to ask you to
9 look under John Jones; right?

10 A Right.

11 Q So, if, for instance,--

12 THE COURT: Even if her last name is identi-
13 fied?

14 THE WITNESS: Well, all that would do, if she says
15 she wants to know about John Jones, then I can tell her when
16 John Jones was overheard. That's all I can tell her. "John
17 Jones was overheard," if he's identifiable with the person
18 making the request.

19 THE COURT: But if--using that hypothetically
20 if someone called and said, "This is Mary," and the field
21 office is able to identify Mary as Mary Smith--

22 THE WITNESS: She would go in as Mary Smith,
23 in the indices.

24 THE COURT: Okay.

25 Excuse me. Go ahead.

1 THE WITNESS: If the person is identified,
2 they are placed in the file. If they are unidentified, they
3 are not.

4 Q That is if the field office reports that to you, isn't
5 that right?

6 A That's right.

7 Q But the field office can keep it in their office and
8 not send that in to you; isn't that right?

9 A It's possible.

10 THE COURT: Well, are they required under any rule--

11 THE WITNESS: They are required to send it in.
12 The rules state that every person identified must be sent in.

13 Q That doesn't always happen; does it, Mr. Smythe?

14 A I do not know if it hasn't happened. I have no knowl-
15 edge one way or the other.

16 Q But you say to the Court that all the information that
17 is required to be sent in to your office is, in fact, sent
18 in?

19 A No.

20 Q Now, if I--so that it's--excuse me. Let me strike that.

21 So it's possible that an agent
22 in the field office would know that the Mary on our hypo-
thetical conversation was Mary Smith, but would not put that
information down and send it to you unless she said, "hi,
John. This is Mary Smith." Is that right?

1 That's possible?

2 A No, that's not right.

3 Q Why not?

4 A If he identifies her--if a Mary calls--

5 Q That's right.

6 A --and he doesn't know who she is, but later determines
7 who she is, he will send in the card. He is required to
8 send in the card.

9 Q Very often, FBI agents do not do what they are required
10 to do; isn't that correct?

11 A I won't--can't answer that. You're saying that.

12 Q Well, Mr. Smythe, let me ask you another thing: Are you
13 prepared to take responsibility for the agents in the field
14 offices and vouch for the fact that they send in cards when
15 they are supposed to?

16 A No.

17 Q I don't blame you.

18 MR. KELLY: Your Honor, I object to that
19 last remark. It's out of order.

20 THE COURT: Yes, strike that and we will
21 have no response from the people in the back of the courtroom.
22 That remark was uncalled for, Miss McGuigan, and let's not
23 go into it.

24 MISS MCGUIGAN: Well, Judge, I apologize if I
25 offended the Court by that.

1 THE COURT: Well, you're an officer of the
2 Court and I want you to direct your questions for the benefit
3 of the Court and not for the benefit of anyone in attendance.

4 MISS MAGUIGAN: But, Judge,--

5 THE COURT: And I can assure you that I
6 won't be impressed by your emotional reaction to it.

7 MISS MAGUIGAN: Judge, one of the things that
8 we have tried to do with our subpoena to Clarence Kelley
9 is to get someone who could answer these questions. I want
10 to make a record of the fact that this agent cannot.

11 THE COURT: Absolutely. That's understand-
12 able.

13 MISS MAGUIGAN: Thank you.

14 Q Now, Agent Smythe, if I wanted to find out about con-
15 versations in which Jay Weiner had been overheard and there
16 has not during the relevant period been a telephone regis-
17 tered in his name, but I had reason to believe he had been
18 overheard, I would have to submit to you the names of the
19 persons on whose telephones I thought he had been overheard;
20 isn't that right? Before you could make a check.

21 A Uh-huh.

22 Q Would you answer "Yes" or "No."

23 A Yes.

24 Q Yes.

25 THE COURT: You mean--do I understand this?

1 Is the question that if you identified him by name--

2 THE WITNESS: Are you talking about--by name?

3 Q Right.

4 A If he is not in the indices by name, then we have no
5 knowledge of him anywhere on any phone at any time.

6 Q But supposing we have a situation where there's a sur-
7 veillance going on of someone with whom Jay Weiner has
8 conversations regularly, and supposing, during those con-
9 versations Jay just says, "Hi, this is Jay," and they talk.
10 If you were going to determine to a certainty that those con-
11 versations had not been overheard, you would have to check the
12 phones on which he made the calls; isn't that right?

13 I would have to give you a list
14 and say, Here are 12 phones on which Jay Weiner has been
15 overheard and you would have to check those phones in order
16 to say to a certainty that he had not been overheard; isn't
17 that right?

18 A Right, if he didn't give his name. If it was somebody
19 like Jay, just Jay.

20 Q If it was just Jay. If he was talking to a friend--

21 A Uh-huh.

22 Q --and said, "This is Jay."

23 A Right

24 Q You would have to check that friend's phone in order
to determine to a certainty that that conversation was not

1 overheard?

2 THE COURT: Was what?

3 MISS MAGUIGAN: Was not overheard.

4 THE WITNESS: Well, we would be dependent
5 then upon you telling us that this is Jay Weiner making that
6 conversation, and we would have no way of knowing it was
7 him, unless you told us it was him.

8 THE COURT: Would your card show, say
9 Jay Weiner called Frank Smith and said, "Hello, this is Jay,"
10 and no one knows who Jay is, would Frank Smith's card say that
11 there was a call from a man named Jay?

12 THE WITNESS: No.

13 THE COURT: Well, then, you couldn't find
14 that out even by checking Frank Smith's card.

15 THE WITNESS: Well, if we checked Frank Smith
16 and you made a specific statement that Jay Weiner called
17 Frank Smith on such a day and used the name Jay and then we
18 checked Frank Smith, and we did have a surveillance on that
19 phone, and the log showed a Jay calling, who had not been
20 identified, then that's Jay and you are telling us it's
21 him. But we have no way of knowing it.

22 THE COURT: All right. I understand you
23 then. You are not saying that the card would make any --as
24 far as you have it--would make any reference to Jay. Frank
Smith's card would make no reference to Jay unless Jay was

1 identified by a last name.

2 THE WITNESS: Unless he was identified by
3 last name, that's correct.

4 If he were identified, which
5 would therefore make the information obtained usable, then
6 it would be entered in the indices. Otherwise, it would be
7 just, you know, unusable information that is waiting for
8 some unraveling, I guess.

9 THE COURT: I understand. If Jay calls
10 Frank Smith and says, "I am Jay," and no one in the field
11 office knows who Jay is, you have no record of that anywhere.

12 THE WITNESS: That's correct. That's
13 correct. We would have nothing anywhere. Except it would be
14 in the logs of the surveillance.

15 THE COURT: Yes. All right.

16 Q Mr. Smythe, what if the agent in the field office thought
17 it might be Jay Weiner? What would he do then?

18 A Well, they would have to make a determination one way
19 or the other whether it is or not, and then opt in favor of
20 his suspicion that it might be, and send a card in.

21 If he thinks it's somebody but
22 he's not sure, he should send a card in. He would send the
23 card in.

24 Q What are the logs?

25 A There are no laws relative to maintenance of the ELSUR

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In the Matter of:

THE GRAND JURY SUBPOENAS OF
MYRNA SALGADO LOPEZ,
JUAN ROBERTO LOPEZ,
JOSE LOPEZ
PEDRO ARCHULETA and
MOISES MORALES,

Petitioners.

No. 76 GJ 1128

Feb. 23, 1977

TRANSCRIPT OF PROCEEDINGS

Before

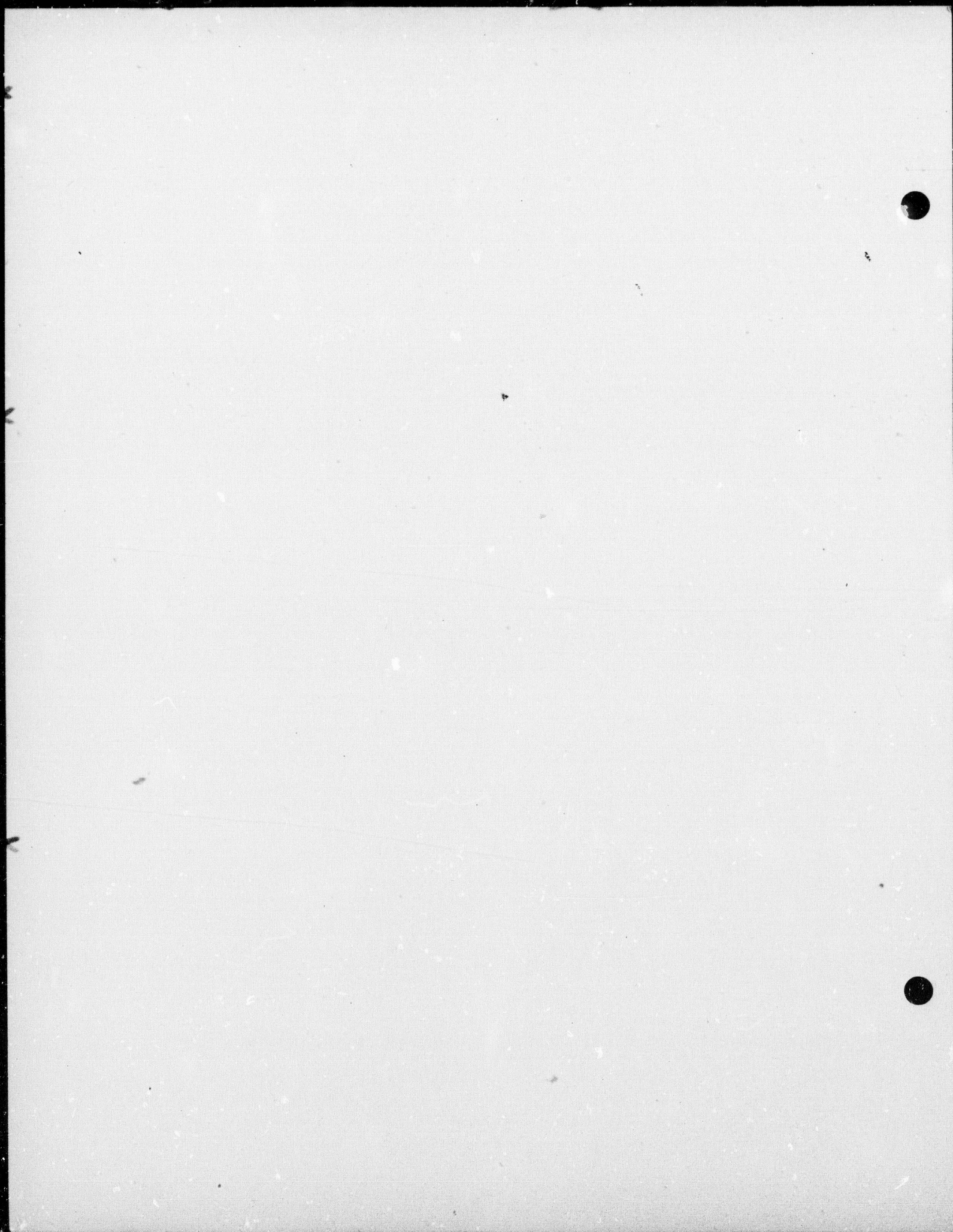
HON. JAMES B. PARSONS
Chief Judge

JOSEPH R. BETZ

Official Reporter

UNITED STATES DISTRICT COURT
210 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60601
HOURS: 9:00 A.M. - 5:00 P.M.

EXHIBIT 12



CUETO AND NEMIKIN AFFIDAVITS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
In re: Maria T. Cueto and
Raisa Nemikina,
Contemnors

MII-128 (MEF)
AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

Maria T. Cueto, being duly sworn, deposes and
says:

1) I am presently incarcerated, pursuant to being held in contempt (28 U.S.C. 1326), at the Metropolitan Correctional Center, 150 Park Row, New York, N.Y.

2) On May 10, 1977, Mr. Grivious, the counselor for the Fifth floor, came to me and said "you have to go down and see the F.B.I.". I asked him whether I had to go and he replied that he did not know.

3) ~~as~~ I was escorted down to the 3rd floor by Mr. Grivious and Officer Katermone after again asking whether I could refuse to go.

4) When we got to the 3rd floor, a Lt. motioned to me to come inside his office. The Lt. left and closed the door.

5) Inside the room was two men who in two

duced themselves as F.B.I agents and showed me their badges. Their names were Thomas J. Ierison, X-333 and Ronald W. Butkiewicz, F.B.I, N.Y.C. # 535-7700.

6) I refused to sit or shake their hands. Mr. Ierison commented on this. I wanted ^{for} them to speak first. They said they wanted to ask me some questions. I said "I have nothing to say. I already told them everything I knew. Call my attorneys if they had anything to say to me"

7) Butkiewicz stated that they were investigating bombings in N.Y.C. and specifically the FALN. and the bombing of Fraunces Tavern.

8) The same agent then told me that I could not say that I had told them everything because these questions had not been asked before. He continued and said he did not understand why they hadn't asked me these questions before.

9) I again said and continued to repeat that I had nothing to say and to call my attorneys.
● Mr. Butkiewicz said that he was an attorney and that he thought it would be alright for me to speak to them.

10) They told me that they knew that I had done social work and had helped many people. It was clear therefore that I could not sleep or have a clear conscience unless I helped them solve the murder of the 4 people. They then went on to describe the family's of the 4 people who had died and that I could help them solve the case. He told me of the "bloody scenes" at Inaunces Tavern and what he (Mr. Butkiewicz) had seen when he visited Inaunces Tavern after the explosion.

● ^{said that they wanted to ask}
11) They then ~~asked~~ me about "Carlos", about his activities, where he got to where he was, etc.
12) Mr. Butkiewicz then said that I was the "only person in the world that could help

them "

- 4 -

13) I continued to refuse to answer any questions, stating that they should call my attorneys if they had anything to say to me. I told them that they should give me their cards because I wanted to leave.

14) Mr. Butkiewicz then said, to the best of my recollection:

"You also have no reason to say that you were harassed because we never harass people. No one set out to harass Ms. Nemikin and yourself. It is our obligation and duty to search for the people responsible and we will not stop."

He continued by saying that he would ask me the questions in front of however many attorneys I wanted; although I repeated to them that if they had anything to say to me they should call my attorneys.

15) Mr. Butkiewicz then said he would only call my attorney if I agreed to talk. He said that he saw no reason to call my attorneys if I wasn't going to talk to him. He said "I have nothing to say to your attorneys"

16) They then asked who my attorneys were.

Mr. Terjson then said "I know of Margie Ratner

Mr. Butkiewicz then said "and Liz Fink". I said,

"Elizabeth Fink is the attorney of record."

17) Mr. Butkiewicz then said that "they would be back", they handed me a piece of paper with their names on it.

18) I then walked out of the room and went to Officer Cartmore who was standing outside the room. I was then taken back to the 5th floor

19) I was not advised by any prison official or government agents that I was being taken downstairs to see F.B.I. agents. The only reason I knew was that Raisa Nemikin had been interviewed right before me and told me, up

his return to the 3th floor that the F.B.I. was at the prison to see us.

20) From the time I was escorted down to see the two agents until I was returned to my floor, I stated and repeated again and again that I had nothing to say to them, that I did not want to go see the agents and that I wanted my attorneys called.

21) In complete disregard to what I was saying they brought me down to the agents who questioned me for about 10 minutes.

22) The prison authorities knew that the F.B.I. agents were there because Mr. Brivious, when asked, said that he did not know whether I had to speak to the agents. When I got downstairs, the Lt. on the 3rd floor called me into his office where the two agents were.

23) During the time that the agents spoke to me, they were standing directly in front of me and at one point, when I attempted to leave, one of the agents made a move to block my exit.

24) They made it clear to me throughout the interview that they would not stop and that they would be back.

25) The only thing I said to the agents throughout the interview was that I had told them all I know, I have nothing to say to them and that if they had anything to say to me they should call my attorneys.

Maria T. Cueto
MARIA T. CUETO

Sworn before me
this 12th day of
May, 1977.

Susan V. Typograph
Susan V. Typograph
Notary Public - State of New York
No. 31-4629206
Qualified in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
In re Maria T. Cueto and
Raisa Nemikin,
Contemners -x

MII-100 (MEF)
AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

Raisa Nemikin, being duly sworn, deposes and

says:

1) I am presently incarcerated at the Metropolitan Correctional Center, 150 Park Row, N.Y., N.Y. after being held in contempt, pursuant to 28 U.S.C. 1821.

2) On May 10, 1977 at about 1:30 P.M. I was on my tier, cleaning garbage cans when Mr. Grivious, the 5th floor counselor came up to me and told me to put shoes on because "the associate warden wanted to see me" and that he would take me down to his office.

3) As I was getting on the elevator with Mr. Grivious, I asked him why the associate warden wanted to see me. He responded that he did not know.

4) On the 3rd floor, I was taken to the associate warden's office, but there was no one there. A secretary was passing by and Mr. Grivious asked her if the associate warden was there. She said that she did not know but that there was a parole board meeting that afternoon which he might be at. The secretary stated that the associate warden could be in the office next door to his. Mr. Grivious took me to the door of that office.

5) There were two men in the office we stood before and when one of the men stood up, Mr. Grivious said "~~these~~^{this} must be it" and left.

6) The man who stood up introduced himself as Ronald Butkiewicz from the F.B.I. The other man introduced himself as Thomas Terjeson, also from the F.B.I.

7) Agent Butkiewicz said that he would like to talk to me. I told him right away that I did not want to talk to them, I had nothing to say to them and that I did not want to hear anything they had to say to me. I asked Mr. Butkiewicz for a pen and paper so that I could write their names and numbers down. Mr. Butkiewicz insisted that he just wanted to ask me some questions.

8) I repeated to them that I did not want to talk to them and that I wanted their names and their numbers.

9) When Mr. Butkiewicz continued to talk saying they were investigating serious crimes and were trying to locate a dangerous murderer, I stopped him and repeated that I had nothing to say and that I wanted a paper and pen to write their names and numbers down.

10) Mr. Butkiewicz pulled out of his pocket a folded yellow piece of paper and said why should I give you our names and numbers if you're not going to talk to us -- why do you need them.

11) I then said that "they could give me their names and numbers if they want it was all the same to me." All I wanted was to get back to my tier.

12) Mr. Butkiewicz then said it was not all the same to the men who were murdered at Fraunces Tavern.

13) I then started towards the door which was slightly ajar. At that time Mr. Terje-son stood up and told me to think about the murdered men's family's.

14) I went out the door and called to Mr. Drivens to take me back to my floor. Mr. Butkiewicz told me that I had to stay in that area. I told him that I

knew that; at which point he gave me the folded yellow piece of paper which had the two agents' names and numbers on it.

15) Mr. Grivious escorted me back to the 5th floor where I went directly to tell Maria Cueto that I had just been interviewed by the F.B.I.

16) The interview lasted for about 5 minutes, the entire time I kept insisting that I did not want to talk to them.

17) During the entire interview I was alone in the room with the 2 F.B.I. agents.

Raisa Nemikin
RAISA NEMIKIN

Sworn before me this
12th day of May, 1977

Susan V. Tipograph

Susan V. Tipograph
Notary Public, State of New York
No. 31-4629206
Qualified in New York County
Commission Expires March 30, 1978



AFFIDAVIT OF APPELLANT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Grand Jury
Subpoena Served Upon

PEDRO ARCHULETA

:
:
:
INDEX NO.

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AFFIDAVIT

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

PEDRO ANTONIO ARCHULETA III, being first duly sworn,
deposes and says:

1. On November 23, 1976 I was served with a subpoena ordering me to appear before the grand jury of the United States District Court for the Northern District of Illinois. On or about December 23, 1976 I was served with a subpoena ordering me to provide fingerprints, photographs and palmprints to the same grand jury. Since the service of these subpoenas I have been involved in legal proceedings in Chicago related to the subpoenas, as described in the affidavit of Dennis Cunningham

2. On March 29, 1977 I was served with a subpoena ordering me to appear before the grand jury of the United States District Court for the Southern District of New York to testify before that grand jury.

3. I believe that all the subpoenas served on me are invalid because of gross abuse by the government and perversion by the

EXHIBIT 9

government of the grand jury process.

4. I live in La Puente, New Mexico which is located in Northern New Mexico, approximately 150 miles north of Albuquerque, New Mexico. The airport which I must travel to in order to fly to Chicago or New York is located in Albuquerque.

5. I am employed as the project coordinator for La Clinica del Pueblo and La Cooperacion, which are, respectively, a medical clinic and a community service organization, located in Tierra Amarilla, New Mexico near my home. I have worked with these organizations since 1970. Tierra Amarilla is in Rio Arriba County-- a sparsely populated, rural and very poor part of New Mexico.

6. In 1972 and 1973 I was a member of the National Commission on Hispanic Affairs (NCHA) of the Episcopal Church. The Hispanic Commission has granted operating funds to Los Derechos de Familia, a social service project of La Clinica, which provides assistance to low income persons in the areas of social security, medicaid, medicare, hospital indigent funding, and other governmental administrative proceedings. The Hispanic Commission also provided operating funds to La Oficina de Ley, a New Mexico non-profit corporation in Tierra Amarilla whose attorneys provide legal representation for La Clinica and La Cooperacion.

7. I am involved in the Chicano movement in New Mexico. In the last several years, I, in the organizations with which I work, other people connected with these organizations, and other community organizations have been involved in challenging the leadership and policies of individuals who have long controlled jobs and politica to the detriment of poor and powerless people in

Rio Arriba County. This challenge has been in the form of providing jobs for all people with community service organizations, running candidates for office, filing lawsuits and publicizing abuses within the county by law enforcement agencies and other public bodies.

8. The response of law enforcement agencies, ranging from the FBI to the Rio Arriba County Sheriff's Department, has been to attempt to intimidate me and the organizations with which I work and other individuals and community organizations within the county, as follows:

a) In the last 5 months I have had to spend a great deal of time either in legal proceedings in Chicago and/or in the preparation for such legal proceedings. As a result I have been prevented from participating in political activities in New Mexico. In addition, I have been unable to effectively perform my work with La Clinica and La Cooperacion. This work includes driving the ambulance from La Clinica to the nearest hospital 70 miles away and providing first aid assistance to people, an area in which I have had advanced training. I am one of the few people in my area of New Mexico who can provide such services. Being under subpoenas in both Chicago and New York makes it impossible for me to carry out any work in New Mexico.

b) On or about March 29, 1977 two FBI agents attempted to question Maria Varela, the manager for La Clinica. When she said that she wanted her lawyer present, they left;

c) The FBI has questioned me and other Chicanos on repeated occasions within the last year and one-half. The FBI agents came from Santa Fe, 90 miles away, and from Albuquerque, 150 miles away.

d) An FBI investigation has been in progress in Rio Arriba County concerning my activities and the activities of organizations

and individuals with whom I am associated;

e) In November, 1975, the Rio Arriba Sheriff's office carried out a search of my home, the homes of other people working with La Clinica and La Cooperacion, and also the offices and files of La Clinica, La Cooperacion, and La Oficina de la Ley. These searches were based on defective warrants, and I was arrested on federal charges which were subsequently dismissed by a federal judge in Albuquerque in 1976;

f) Other Chicanos associated with political groups in northern New Mexico have been arrested within the past year and one-half. They have either been acquitted or criminal charges against them have been dismissed;

g) The FBI has recently investigated telephone calls made from my house and has conducted surveillance on me and other Chicanos in New Mexico.

h) Before I was subpoenaed to the grand jury in Chicago I was told by an FBI agent that if I talked to the FBI, I would not have to go to Chicago. Before I was handed the New York subpoena on March 29, 1977, I was told by an FBI agent that if I agreed to talk to the FBI, I would be given immunity. On both occasions, when I refused to talk to the FBI agents, I was immediately served with a subpoena.

g) The FBI presence in northern New Mexico in the last year and one-half and my subpoenas to New York and Chicago have made it clear that when Chicanos in New Mexico which actively concern themselves with fighting political abuses against our people, they will be investigated and torn away from their homes, families, and work

SWORN TO BEFORE ME THIS

3RD DAY OF APRIL, 1977.

NOTARY PUBLIC

PEDRO ARCHULETA

AFFIDAVIT OF MARIA VARELA

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Grand Jury
Subpoena Served Upon

:
: INDEX NO. 77 Cr. Misc.
: (M11-88)

PEDRO ARCHULETA

:
: AFFIDAVIT

STATE OF NEW MEXICO)
)
COUNTY OF SANTA FE)

MARIA VARELA, being first duly sworn deposes and says:

1. I am the Clinic Coordinator of La Clinica del Pueblo, Inc. in Tierra Amarilla, New Mexico. The following is a description and history of La Clinica del Pueblo and La Cooperacion del Pueblo (a community service corporation located in Tierra Amarilla. I will also describe recent questioning of me by the FBI which I consider to be part of a pattern of abusive activities by the government against me, Pedro Archuleta, the Chicano movement in New Mexico, and Hispanic movements across the country.

2. In the spring of 1969 a few families in the Tierra Amarilla area talked about starting a cooperative. They were land grant descendants and had been active in the Land Grant Movement. They decided that they needed a local organization of their own that would start using the land again. La Cooperativa Agricola del Pueblo de Tierra Amarilla was founded on April 10, 1969 with 16 families as members. In order to join a person lent land, machinery or worked whatever crops people decided to plant. The first crops were potatoes. The people asked for volunteers from the community and the state to help this effort. A camp for the volunteers was set up on the side of a hill and young people from all over worked the field every day.

3. In the summer of 1969 the local physician who had been

EXHIBIT 10

called up with the New Mexico National Guard to Viet Nam came back to the Chama Valley and let it be known that he had decided to relocate and sell his clinic. The Cooperativa met and decided that they would buy the clinic and try to find a doctor. Two people had bled to death on the highway that summer, and health care was a big concern. The cooperativa raised the money in-state and through the Medical Committee for Human Rights to make a down payment on the clinic. In July of that year, a separate non-profit organization, La Clinica del Pueblo de Rio Arriba, was set up to handle the business of starting a health care system. La Cooperativa continued with its plans to plant more land and start some agricultural economic development projects.

4. On September 5, 1969 the clinic was set on fire. The entire north end was gutted, with extensive smoke damage to the rest of the building. State police in their investigation found a gasoline can and took a casting of footprints found outside the doctor's office. Since the event received wide press, envelopes with money in them started turning up at the Tierra Amarilla Post Office simply marked "Clinic, Tierra Amarilla." \$1,700 was collected and a state wide mailing list was started. Church people around the state offered to come and spend weekends cleaning up the clinic -- preparing the way for a contractor to repair it. Through all these efforts supporters of our groups began local support groups in Albuquerque, Los Alamos and Santa Fe.

5. In October of 1969 the first proposal requesting funds for La Clinica was written. By January 1970 \$5000 had come in. The clinic met and decided that this money would be used to send three young local people to a California clinic to learn nursing, reception, x-ray and lab skills. The three left in February. In May the contractor finished repairing the clinic. The three trainees returned. Through the efforts of a Vista dentist who arrived in February, dental equipment was scrounged from supporters.

around the state, installed and was ready for business in June.

6. The clinic opened the 1st of June with a small skeleton staff and a dentist. Several doctors came through and were interviewed by the staff, but none stayed. There was no salary possible at that time, just room and board and travelling expenses were taken care of. The staff at this point was a clinic manager, nurse-aide, lab and x-ray aide and a dentist. The cooperativa had 3 volunteer staff people. In September, a couple from Chicago came to join us and the Family Counseling Project was started. This project was to counsel families as to their rights to all levels of public assistance. It received a small amount of church funds for operating expenses.

7. By February of 1971 the clinic's first full-time physician joined the staff. At the same time as RN from the West Coast joined the still volunteer staff. As small grants were coming through from church, individual and foundation sources and a small amount of patient revenue was being generated, the staff decided it was time to get paid. People listed their monthly expenses and came up with a \$200 monthly amount that was needed for them and their children's support.

8. During this time clinic staff, membership and board members were taking time guarding the clinic 7 nights a week. This continued until the spring of 1972 when it was felt that the clinic was no longer in danger from those forces who felt that a health clinic would legitimate the land grant issue and unite the people against the large corporate landowners.

9. While the clinic was struggling to gather equipment, money, staffing and supplies, La Cooperativa was busy with plans to expand the building on the grounds. With the help of the Community Design Center of the University of New Mexico, a master plan was drawn up which designed a large community service building, to house the welfare rights project, the law office, the cooperativa office, and a small silk screening operation, as well as a maternity center to be attached to the clinic. The silk

screen operation was first launched when a local well-known artist agreed to donate her work and design a Spanish calendar to be sold by La Clinica and La Cooperativa to raise funds. The first calendar raised nearly \$2000 and after expenses were made it was the first amount of money to begin a construction fund. The basement for the community services building was dug in June of 1972. Soon after, a basement for a maternity center, attached to the clinic itself was also dug. In bits and pieces for the next 4 years La Cooperativa raised money for itself in the local community, in the state and from national funding sources to build these buildings. The bulk of the money came from churches, small foundations and individuals. If we were to take into consideration the in-kind contribution of the construction workers who worked for \$1.60 an hour instead of the going construction wage of \$4.50, the men of the community and their families contributed more than \$100,000 in volunteer wages.

10. In 1972 a young doctor and his family arrived to take over the medical practice, as the original doctor had resigned and moved on. This doctor and his wife built the clinic practice from 100 families enrolled to 1200 families enrolled. By 1973 the clinic had a staff of 8 people, the family counseling project had 2 people, the silk screen project had 1 person fulltime and 4 volunteer high school students, and the cooperativa had 5 staff people.

11. A new project began, La Oficina de Ley, with one staff person -- a local woman who had been trained to run the office and screen possible clients. (volunteer attorneys from Santa Fe were taking cases) Soon after, in 1974, an attorney arrived and the Oficina officially opened for business. By this time the large community services building had been partially completed -- enough for one project, the law office, to move into. The maternity center was still a shell.

12. La Cooperativa, besides raising money for construction looking for physicians and attorneys and other needed profession-

als for the various projects, making contacts with the appropriate federal manpower sources, such as Vista and National Health Service Corps, preparing all funding proposals and fund-raising literature for all projects, was also experimenting with agricultural economic development. It tried a small hog farm, a small green house, a large steer raising project, a construction cooperative and other smaller ventures. Only the construction cooperative remains in some form in operation today, and it is now independent of the cooperativa.

13. By 1974 the clinic had another doctor on its staff, due to the efforts of La Cooperativa in its contacts with the National Health Service Corps. La Clinica was also the first community health organization to receive a large grant from the Robert Wood Johnson Foundation for the purpose of contracting with the University of New Mexico Medical School for extremely technical training for our nurses to equip them to run and staff the new maternity center (scheduled for completion in 1975) By 1974 the clinic was about 40% self-sufficient from patient receipts with its 11 person staff (with the exception of the doctor and the dentist) still only making \$200 per month. Also in 1974 all projects had moved into the large community service building (they had previously been working out of a house in Tierra Amarilla, a church in Los Ojos, and the small trailer on the clinic grounds) The clinic became a Vista sponsor and staffed several of its projects with local people. Out of the 35 staff people by this time employed by La Clinica, La Cooperativa (now La Cooperacion del Pueblo) and the other projects, 11 were from the outside and 24 were from the Chama Valley surrounding Tierra Amarilla.

14. In 1975 the maternity center was completed and licensed by the State of New Mexico. The clinic was 60% self-

sufficient from patient receipts and had a staff of 16. A second dentist came on staff from the National Health Service Corps. He ran our dental clinic and our original dentist began a small dental lab. The Oficina de Ley had 3 attorneys (including 1 Vista), an office manager and part-time secretary, and was 30% self-sufficient from client income. One of the attorneys heads up the land grant project which since 1971 has done an enormous amount of research into the State Archives on the status of the Tierra Amarilla Land Grant. The Oficina de Ley also ran several community law classes for local citizens on their rights.

15. It was in 1975 that the organization joined with other Chama Valley residents in opposing a proposed private-jet airstrip sponsored by the Village of Chama and then subsequently by the County Commissioners. A Raza Unida Party was started in the southern part of the state which fielded candidates for sheriff and county commissioners, and several members of La Cooperacion and La Clinica worked for the election of these candidates.

16. After that, local and federal law enforcement officers began an open campaign against La Clinica, La Cooperacion, the members of these groups, and other groups who were openly opposing the local power structure and who provided an alternative, both economically and politically, to local people. A description is provided in the brochure attached to my affidavit as Exhibit A. I feel that these actions have been carried out because Chicanos in northern New Mexico have begun to successfully organize themselves.

17. My own most recent experience with the FBI is as follows.

18. On March 29, 1977 at approximately 3:30 p.m. two men came to my home near Tierra Amarilla. They asked to come in and when I asked who they were they replied that they were from the FBI. At that point I told them that I would not talk to

them about anything unless my attorney was present. They then asked me if "Lorenzo" was there and if he would talk to them. I live with a man known as "Zuni" but his proper name is Lorenzo. I said that he was not there, and that they would have to ask him whether or not he would talk to them. They asked where he was and I told them that he was working in a nearby town but that I expected him home shortly. They asked me if my attorney was "Rosenstock." I answered yes because my attorney's name is Richard Rosenstock. They then asked me if Rosenstock was "the corporate attorney" to which I answered yes because he represents La Clinica del Pueblo. The men then left my house.

19. The next day the man who I live with was told by a friend that he was asked questions by two men identifying themselves as FBI agents. The agents asked questions about the man I live with as well as about Anselmo Tijerina, another employee of La Cooperacion.

20. On that same day I saw the two men who identified themselves as FBI agents sitting in their car in two different places in a village near my home. I was also told by other people that the agents had been asking people in the vicinity about me.

21. I believe that the FBI attempted to question me because several weeks before, while on a business trip to New York, I had dropped by the offices of the Hispanic Commission. No one was there.

Maria Varela
MARIA VARELA

SUBSCRIBED AND SWORN to before me this 13 day of April, 1977.

Matthew J. Lewis
NOTARY PUBLIC

My commission expires:

6/22/77



TESTIMONY OF FBI AGENT JOHN SMYTHE
IN IN RE WEINER

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE: GRAND JURY PROCEEDINGS
SCRANTON, PENNSYLVANIA,

SUBPOENA OF JAY WEINER,
SUBPOENA OF PHILLIP HUNT SWINNEY.

: CIV. NO. 76-1001
: NO. 100
: DO. 142.

BEFORE: HONORABLE WILLIAM J. NEALON,
Chief Judge, Middle District
of Pennsylvania,
Contempt Hearing,
Volume I,
at Scranton, Pennsylvania,
on Friday, September 17, 1976,
at 11:05 a.m.

APPEARANCES:

For the Government: S. JOHN COSTONE, ESQ.,
United States Attorney
for the Middle District
of Pennsylvania, and
LAURENCE KELLY, ESQ.,
Assistant United States Attorney
for the Middle District
of Pennsylvania,
Scranton, Pennsylvania.

For the Defendants: KATKIS, RUDOVSKY & MAGNIGAN, ESQ.,
BY: ROLEY MAGNIGAN, ESQ.,
Suite 200 - 1427 Walnut Street,
Philadelphia, Pennsylvania,
For Defendant Weiner.

MORRIS STAVIS, ESQ., &
JOHN J. JOHNSON, ESQ.,
Counsel for Constitutional Rights,
100 West 42nd Street,
New York, New York
For Defendant Swinney.

EXHIBIT II

(3)

I N D E X

<u>RESPONDENTS WITNESSES:</u>	<u>DIRECT</u> <u>EXAM.</u>	<u>CROSS</u> <u>EXAM.</u>	<u>REDIRECT</u> <u>EXAM.</u>	<u>RE-CROSS</u> <u>EXAM.</u>
David M. Spain	(S) 47	52	(S) 55	
John L. Smythe	(M) 58			

GOVERNMENT WITNESSES:

Alice Glatz	105	(S) 111
		(M) 121
		(S) 141

<u>RESPONDENTS EXHIBITS:</u>	<u>MARKED</u>	<u>OFFERED</u>	<u>ADMITTED</u>
A.	28		
E.	38		

GOVERNMENT EXHIBITS:

1.	109	110	110
2.	109	110	110



TRANSCRIPT OF PROCEEDINGS, NORTHERN DISTRICT OF ILLINOIS
2-22-77

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In the Matter of:

THE GRAND JURY SUBPOENAS OF
MYRNA SALGADO LOPEZ,
JUAN ROBERTO LOPEZ,
JOSE LOPEZ,
PEDRO ARCHULETA and
MOISES MORALES,

Petitioners.

No. 76 GJ 1128

TRANSCRIPT OF PROCEEDINGS
before
HON. JAMES B. PARSONS
Chief Judge

February 23, 1977
2:45 o'clock p.m.

PRESENT:

MR. McALLISTER

MR. CUNNINGHAM

MR. LOPEZ

MR. DEUTSCH

- - -

I think to require more is to turn every bland complaint of this nature into an in-depth investigation of the government and would completely frustrate the efficiency and timely performance of the grand jury function.

Here the two assistant U.S. Attorneys assigned to this matter, as well as the Special Agent of the Bureau of Investigation primarily responsible for investigating the events before the Special 1975 Grand Jury have submitted sworn affidavits denying any knowledge of electronic surveillance having been conducted of movants. These affidavits are a sufficient response to the speculative assertions raised by the movants at this point, relying upon *In Re: Vigil*, supra, at 216. Accordingly, movants' motion for disclosure of electronic surveillance at this time is denied. This denial is without prejudice to its being requested again upon a further showing by the movants. That's the decision.

Now, I think that under the circumstances you may want to take further time to see if you can amend your position with further affidavits of some more -- what was the phrase I used -- some more technical sophistication.

MR. LOPEZ: Yes, your Honor, and I am prepared to do that. As soon as I get back to New Mexico I am going to work on that. We do have some very specific points in mind.

in this other matter, which is a sort of class action thing, which we would like to spend sufficient time with until you return. Is that agreeable?

MR. CUNNINGHAM: I think that will be fine.

MR. MC ALLISTER: Your Honor --

THE COURT: How long would you --

MR. MC ALLISTER: At this point I have to interpose an objection, your Honor.

THE COURT: You are concerned about the progress of the grand jury?

MR. MC ALLISTER: The grand jury has been delayed now for months, Judge.

THE COURT: Well, one more week isn't going to hurt that much.

MR. MC ALLISTER: Perhaps we could go ahead and if the petitioners provide the Court with new affidavits at that time we could take the issue up.

THE COURT: Well, I wouldn't --

MR. MC ALLISTER: But, your Honor, we would like the subpoenas returnable once again.

THE COURT: I am obligated to give the movants sufficient time to file further affidavits in this. The other I can hear in an hour or so anyway at that time.

MR. CUNNINGHAM: I think that is correct, Judge. We do.

concrete that we wanted to put in. I mean, we are not talking about mere clicks and buzzes.

We have at least one incident in New Mexico that we want to plead.

THE COURT: Well, let's hear it. How soon can that be ready?

MR. CUNNINGHAM: I have a time problem, Judge, in terms of next week. I know there is another subpoena returnable in here next week.

THE COURT: Well --

MR. CUNNINGHAM: So it may be that we are going to be in here anyway.

THE COURT: I think that the grand jury should continue its work the best it can. Since they have other subpoenas, why, we will hear those matters as they come up.

MR. CUNNINGHAM: That's true, although I don't want to create the impression that we feel there is just a little thread barring the grand jury from bulldozing its way along.

I don't know what your Honor proposes. At this point it is just simply to put the matter over for a week and ask Mr. Lopez to come back in a week. If we could think about taking a little bit longer than that and --

THE COURT: Let me look at my schedule.

MR. CUNNINGHAM: -- and making sure that we are prepared

AFFIDAVIT OF APPELLANT'S WIFE

AFFIDAVIT

STATE OF NEW MEXICO)
)
COUNTY OF RIO ARriba)

I, Beronice Archuleta, being duly sworn and upon my oath,
depose and state as follows:

1) That I am the wife of Pedro Antonio Archuleta III, and
the mother of his two grade-school age children; that I reside
with my family in La Puente, New Mexico.

2) That our family, like many in northern Rio Arriba County,
New Mexico, relies, in part, on wood heating, hauling water from
outside the area of the house, and raising our own food to
survive.

3) That my income is \$350 per month before taxes as is the
income of my husband Pedro.

4) That I am terribly afraid that if Pedro is kept away from
our family for any period of time we would be completely unable to
support ourselves due to the loss of his salary and the absence of
anyone to chop wood, haul water, do the farming and fix up the
house which is in severe need of repair.

5) That since November, 1974, when I was operated on for
verocose veins, I have been unable to do very much physical work
as I cannot be on my feet too long and as a result I cannot do
the physical work required around our home that Pedro does.

Beronice Archuleta
Beronice Archuleta

SUBSCRIBED AND SWORN TO before me this 14th day of April,
1977.

Stella U. Libani
Notary Public

My Commission Expires:

October 27, 1979

EXHIBIT 16



OPINION OF JUDGE BRIEANT
IN IN THE MATTER OF THE WITNESS HARVEY JOHNPOLL

Standard 12.8 recommends that prosecutors be given power to compel the appearance of witnesses for interrogation. If implemented, this would eliminate one of the major values of the grand jury under present conditions—a source of authority for legally compelling a person to submit to interrogation under oath.

But in some circumstances, especially in areas of widespread public concern, it would be desirable to have grand jury participation in the investigatory function. Allegations of corruption by public figures, for example, should be investigated by someone outside of the administration to preserve the image of impartiality in the investigation and to avoid charges of coverup or whitewash when no incriminating evidence surfaces.

REFERENCES

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3. *Hurtado v. California*, 110 U.S. 516 (1884).
4. "Indictment Sufficiency," *Columbia Law Review*, Vol. 70 (May 1970).
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9. *Tilton v. Mayes*, 163 U.S. 376 (1896).
10. "The Grand Jury as an Investigatory Body," *Harvard Law Review*, Vol. 74 (January 1961).
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RELATED STANDARDS

The following standards may be applicable in implementing Standard 4.4:
 4.8 Preliminary Hearing and Arraignment.
 12.8 The Prosecutor's Investigative Role.

U.S. DISTRICT COURT,
 New York, N.Y., July 16, 1976.

Hon. JOSHUA EILBERG,
 House of Representatives,
 Washington, D.C.

DEAR CONGRESSMAN EILBERG: May I express my appreciation for the courtesies and assistance furnished by your office, particularly Mr. Belsky, in response to my recent request.

Enclosed for whatever interest it may have is copy of memorandum decision in Matter of a Witness, Harvey Johnpoll, before the grand jury, issued this date.

The memorandum is, of course, not intended to express any opinion on the merits of any legislation proposed before your Subcommittee, or otherwise.

Sincerely,

CHARLES L. BRIANT, U.S. District Judge.

Enclosure

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK
 (M 11-188)

In the Matter of a Witness HARVEY JOHN POLL, before the grand jury

MEMORANDUM AND ORDER

Bricant, J.

On August 12, 1975, under docket No. 75 Cr. 406-CIT, Harvey Johnpoll, also known as John Poll, was convicted on his plea of guilty to a superseding Information charging him with having conspired with intent to defraud, to pass and sell, possess and conceal, counterfeit obligations of the United States, to wit,

approximately \$2,000,000.00 in United States Treasury Bills, in claimed violation of 18 U.S.C. § 371. At that time, Johnpoll was sentenced pursuant to § 4208 (b), of Title 18 United States Code to a study, report and recommendation of the Attorney General. Thereafter upon receipt of the recommendation, Judge Tenney of this Court resented Johnpoll, and on December 1, 1975 the judgment was modified to a term of three years, with immediate parole eligibility, pursuant to 18 U.S.C. § 4208(a)(2).

Johnpoll commenced serving his sentence, and is presently incarcerated at the federal prison, Danbury, Connecticut.

A writ *Ad Testificandum* was issued returnable April 14, 1976, and Johnpoll was brought before the October 16, 1975 Special Grand Jury in this District as a witness for its inquiry into alleged violations of 18 U.S.C. §§ 472, 2314 and 371. On May 7, 1976 he was granted "use immunity" under § 6002 of Title 18 United States Code, in connection with that appearance.

Thereafter, Johnpoll refused to testify. While his refusal was complete, and extended even to giving his name and answering whether or not he was married (both matters already fully known to the prosecutors), the real purpose of his appearance before the Grand Jury was to find out the source of manufacture of the counterfeit Treasury Bills, a matter which he steadfastly refuses to disclose under oath.

Thereafter, Johnpoll was brought before Judge MacMahon in Part I of this Court, and ordered summarily confined at Danbury, until such time as he is willing to testify before said Grand Jury, or until the expiration of the term of said Grand Jury (April 15, 1977, subject to an 18 month extension), whichever shall first occur, but said confinement in no event to exceed 18 months.¹

Thereafter, for reasons not relevant here, Judge MacMahon, by order dated May 26, 1976, vacated his May 19, 1976 order, and scheduled a new hearing in Part I of this Court, before me on May 28, 1976.

An evidentiary hearing has been held. The Court is indebted to assigned counsel Arthur Viviani, Esq. for his assistance in making clear at this hearing the facts surrounding Johnpoll's conduct not previously disclosed to Judge MacMahon, which, taken together, are somewhat unusual and appear to give rise to equities in Johnpoll's favor.

Johnpoll's only contention worthy of consideration is that there was a plea bargain, pursuant to which he entered his plea of guilty, and that by reason of the plea bargain, he is exempted from further harassment arising out of the unlawful possession of the counterfeit bills, including being brought before the Grand Jury. The facts, as I find them to be, mentioned below, do not give rise to a legal excuse in Johnpoll's favor, or relieve him in law from the duty imposed on everyone to give testimony. But on the whole record, equities do exist in his favor which render it inappropriate to confine him for contempt in failing to do so.

Johnpoll had been arrested on August 8, 1974 in possession since July 30th of that year, of twenty forged Treasury Bills in \$100,000.00 face denominations, each payable October 3, 1974. By indictment filed August 14, 1974 (74 Cr. 808-CIT) he was charged in two counts, with violation of 18 U.S.C. § 473 (Count I) and § 472. After the usual pre-trial skirmishing, a date was set in the Spring of 1975 for trial before Judge Tenney of this Court and a jury.

The testimony of Theodore Rosenberg, Esq., a respected and experienced criminal practitioner, and Johnpoll's attorney at and shortly prior to the time of his plea, supports the findings of fact stated below.

Rosenberg came into the case substituting for a prior attorney, at least two or three weeks prior to April 21, 1975. He began immediate preparation to defend the charges in indictment 74 Cr. 808.

William Del Grosso was the prosecutor then in charge of Johnpoll's case. He was known professionally to Rosenberg, who, in connection with preparing the case for trial and seeking to ameliorate the criminal responsibility of his client, had several conversations with Del Grosso in and around the courthouse, and visited his office on two occasions.

Count I of that indictment carried a maximum sentence of ten years, and the penalty under Count II could have been fifteen years.

¹ The Court by order dated May 19, 1976 specifically provided that such confinement shall "interrupt the three year federal sentence currently being served by Harvey Johnpoll . . . which sentence shall not resume until the confinement directed by this order is terminated."

Rosenberg concluded early that the factual elements of the case could not be defended successfully, although there was in his view a legal question (regarded as frivolous by Judge Tenney and ourselves) as to whether a Treasury Bill is within the meaning of "obligation or other security of the United States," contained in 18 U.S.C. §§ 472, 473, because not listed by name in 18 U.S.C. § 8.

Rosenberg, who had been socially friendly with the defendant before his arrest, reached the conclusion that a disposition to a lesser charge would be in the interests of justice. It was in this context that a superseding information charging the same facts under a different statute, having a five year maximum sentence was agreed to in order to minimize Johnpoll's exposure to lengthy imprisonment.

At the time the superseding information was filed and consented to by Johnpoll, and on the date that he pleaded guilty, the prosecutor had in mind that after the case was closed, and regardless of outcome, he would call Johnpoll before the Grand Jury to testify as to the source of the forged bills.

In pre-trial proceedings, Johnpoll had asserted that his supplier was one Maurice Rind, a Government informer. This is a common dodge in such cases. The prosecutor assiduously avoided saying anything of his future intentions to Rosenberg or the defendant, and under all of the surrounding circumstances, had such a disclosure been made, it is highly likely that defendant and his attorney would have rejected the plea bargain. Instead, Rosenberg was talking in the broad general terms usually employed in such dealings. He said, and intended, the plea was to "clear up the [entire] case."

Although I decline to find that Rosenberg, at his client's request specifically spoke to Del Grosso about whether Johnpoll would be brought before the Grand Jury, or that he received any assurances that such would not take place, I do find that the entire atmosphere of the plea negotiations was such as to lead a reasonable person in Rosenberg's or Johnpoll's position to believe that "if he took it, [the plea] this will end it." (Tr. p. 27). As noted, although Rosenberg did not ask about possible subsequent grand jury inquiry, Del Grosso didn't tell him. Del Grosso was not engaged in any intentional wrongdoing or unprofessional conduct, but his failure to speak was a misleading omission and unfair.

Rosenberg's reasoning was interesting and accurate. He testified (Tr. pp. 27-28):

"Mr. ROSENBERG. . . . otherwise knowing me I wouldn't have taken the plea. If I knew that the man is going to be exposed for five years, and then subsequently be brought back where he can have additional exposure—

THE COURT. What's the additional exposure?

"Mr. ROSENBERG. The one that he is having right now, by going before a grand jury and not wanting to testify with respect to that. Because if he wanted to cooperate originally, your Honor, he probably could have gotten a walk. But he being involved he took the position that he took."

Rosenberg was correct in assuming that given a reasonably good probation report and cooperation in giving up the true source of the forged bills, Johnpoll would have received a much more lenient sentence. That the Government intended, following the disposition, to call Johnpoll before the Grand Jury was not known to Rosenberg or Johnpoll; they reasonably believed by taking the plea they would end Johnpoll's troubles, he would serve his time, and at the expiration of his sentence go free, without being harassed further, or required to give up the source of the bills.

It was obviously clear to Johnpoll and Rosenberg that giving up the source of the bills would have been highly beneficial to Johnpoll in his dealings with the Government. That he did not do so may be attributed to some form of stubbornness or loyalty, or more likely to the fact, well known to this Court, that credibly forged United States Treasury Bills of these denominations and number certainly were not printed by Johnpoll. Most likely they had their origin with Organized Crime, or were printed overseas as the effort of some powerful international criminal syndicate. Detection of such a source would have been so important to society that any prosecutor would have embraced Johnpoll as a cooperating witness and sought leniency for him, or perhaps even an order *nolle prosequi*. By the same token, although he does not say so, such a disclosure could have imperiled Johnpoll's life. Under all the circumstances Johnpoll made a reasoned decision to make the best accommodation he could, do his time, and remain uncooperative insofar as his fellow criminals were concerned.

It was at least clear that his agreement to waive indictment and plead to the superseding information was based on a promise that the prior indictment, which promised a longer sentence if convicted, would be dismissed. We do not regard a statement on the record by Johnpoll at the time of his plea to the effect that no promises or inducements were causing him to waive indictment in connection with the superseding information, as being entitled to any weight. Rosenberg testified that, in reliance on the good faith of the prosecutor, he did not believe it was necessary to make a record of his understanding of the terms of the plea bargain.

In our efforts to do equity in such matters, we need not impose the statute of frauds on the ramifications of deals made by criminals in connection with disposition of charges against them, and attach on significance to the fact that Rosenberg's reasonable expectations that the plea would terminate the matter for his client were not set forth on the record.

With that state of mind only, Johnpoll's position here would be entirely untenable, but the equities in his favor are improved by the fact that Del Grosso testified that he had the subjective intention all the time to bring Johnpoll before the Grand Jury as soon as his case was closed by plea or verdict, and never told him so. It would have been fair, reasonable and proper to have said so, and doubtless, threatened with such further harassment Johnpoll would have gone to trial on the original indictment, and forced additional burdens on the judicial system associated with a lengthy trial and inevitable appeal.

Johnpoll made an offer of proof at the hearing before me to the effect that he believes that he had a contract or a plea bargain, the effect of which was to terminate all of his difficulties and keep him from any further harassment by the authorities, provided he served his penal sentence. The Court finds that he could have held such belief reasonably, and further that it was reasonably induced by all of the circumstances, taken in their context, with particular emphasis on the failure of the prosecutor to speak at the time of the plea bargain. The test, however, is whether a reasonable person so situated would have such a belief, and his subjective reaction or opinion is of no relevance. For that reason, I declined to take his testimony.

On balancing the equities, the Court believes that the Government conduct in this matter was inappropriate. A prosecutor must be actuated by fairness and openness, even when bargaining for a plea with the lowliest criminal, *Santobello v. New York*, 404 U.S. 257, 261 (1971).

Even when it acts in its investigatory capacity, the Grand Jury is an arm of this Court. Notwithstanding the valiant performance of this body in defense of our liberties for more than eight centuries, the Grand Jury as an institution is under severe attack at this time. This reflects a perception by persons who have had contact with the Grand Jury in its investigatory capacity, that some reform is in order.

Recently, a number of reform bills have been introduced in the Congress, and are presently pending. These include H.R. 1277, introduced by Hon. Joshua Ellberg of Pennsylvania, which, as part of a comprehensive plan for change, reduces the maximum period of confinement of a recalcitrant witness for contempt from eighteen to six months; abolishes reiterative contempt and prohibits any subsequent confinement of recalcitrant witnesses refusing to testify in the same transaction. This bill also requires the Court to inform the Grand Jury of its powers, specifically, to inquire into federal offenses, and conduct independent inquiry of witnesses and documents, all as has been the custom and practice in this District for many years. See specimen Grand Jury Charge used by the Hon. Irving R. Kaufman, Chief Judge of this Circuit, 17 F.R.D. 221, 335, 336 (1955).²

² Other grand jury reform bills introduced, and under consideration by a subcommittee of the House Committee on the Judiciary, would similarly limit the period of confinement, would abolish reiterative contempt, and would require the Court to instruct the grand jury as to its powers. See, e.g., H.R. 2986 (21 sponsors), H.R. 6066 (Rep. Kastemer and Holtzback); H.R. 6207 (Rep. Rangel and Eckhardt); H.R. 11660 (Rep. Conyers); H.R. 14116 (Rep. Holtzman). H.R. 6207 would permit successive confinement for contempt subject, however, to a six month limitation of the total time of confinement. H.R. 6207 also would require the Government to notify the grand jury of its intent to seek the indictment of a particular individual and advise the grand jury of its right to subpoena that individual. H.R. 11660, in addition to abolishing use immunity, would require the witness' consent before immunity can be granted.

In addition, Congressman Ellberg has also submitted a proposed joint resolution presently pending with the Committee on the Judiciary, H.J. Res. 46, calling for an amendment to the United States Constitution, abolishing the need for an indictment, but continuing the investigative function of a grand jury.

Regardless of what avenue reform in this area may take, ultimately the discretion and judgment concerning what is to be done with a recalcitrant witness will remain, as it now is, with the district court.

Title 28 of the United States Code, § 1826 declares the inherent power of a common law court in relevant part as follows:

"§ 1826. Recalcitrant witnesses:

"(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refused without just cause shown to comply with an order of the court to testify . . . the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of—

"(2) the term of the grand jury, including extensions, before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months."

The statute does not, nor could it, compel the Court to confine such a recalcitrant witness. The issue is addressed to the Court's discretion and judgment, not to the wishes of a prosecutor. Perhaps as common law judges, we will best preserve our cherished institutions by exercising the power of coercive civil contempt against recalcitrant grand jury witnesses sparingly and with compassion, not against all contemnors. Rather, we should imprison only where on all the surrounding facts such vast power must be applied to vindicate society's rights and aid the proper functioning of the grand inquest in cases where it is essential to do so.

In this case, perhaps we should hesitate to substitute our judgment for that of the prosecutor and the grand jurors in determining how important it is, now, in the Summer of 1976, to find out who originated forged Treasury Bills in July 1974. Johnpoll could have been subpoenaed almost a year ago, were it so important. We would think that by this time, unless the engravers and printers have lost their skills, retired, given up or died, other forged Treasury Bills (which have a maturity no longer than one year), would have been presented for redemption, showing on their falsified faces the same authorship as Johnpoll's bills. Notwithstanding our reluctance to go into this issue, existence of a genuine present necessity to obtain the testimony sought to be compelled is one of the factors which the Court may balance in deciding whether to imprison a recalcitrant witness.

Johnpoll is not being asked to disclose some matter of extreme pressing public urgency, such as the location of a stolen atomic bomb, or the motive for the Watergate burglary. Rather, he is being asked for a palpably stale fact, the source of counterfeits obtained by him more than two years ago. Balanced against the apparently relative unimportance of the information sought, are the equities in his favor flowing from the negotiations leading to his plea bargain.

In the exercise of discretion, and because of the factors aforementioned, the Court declines to apply the power of coercive civil contempt to Johnpoll in this case. The Government's motion is in all respects denied.

So Ordered.

NEW YORK, N.Y.

July 16, 1976.

CHARLES L. BRIEANT,
U.S. District Judge.

SAN FRANCISCO, CALIF., June 14, 1976.

Congressman JOSHUA EILBERG,
House of Representatives, Washington, D.C.

DEAR MR. EILBERG: The undersigned is the past President of California Attorneys for Criminal Justice, the California defense bar, numbering approximately 1000 attorneys in California active in defense of criminal cases.

During the last year I have conducted a study of grand jury use in California. We have offered to file and filed numerous amicus briefs with different courts on this issue. Our main interest was in the following areas. Since the Supreme Court of California in *Johnson v. Superior Court*, 15 C. 3d 248, 124 Cal. Rptr. 32 (1975), refused by a vote of four to three to hold the grand jury processes

unconstitutional but did quash the indictment (the minor holding that preliminary hearing should follow after the indictment) we do not seek the cessation of activities before the grand jury. Instead, we have concentrated on alternatives to the present grand jury use. These alternatives were in the following area: (1) In the area of providing preliminary hearings after grand jury indictment; (2) In permitting grand jury indictment only in enumerated number of cases specifically limited to cases where the reputation of the individual needs protection and where the indictment comes prior to the arrest. We have developed a lengthy list of factual situations in which grand jury indictment was replete with improper interpretation of laws in the indictment, the nonpresentation of lesser included offenses in the indictment, the failure to advise the grand jurors on legal issues, the failure to provide exculpatory evidence which is known or should have been known to the prosecution, the improper presentation of evidence to the grand jury so as to leave the grand jury with misleading impressions, the use of grand jury in situations in which it constitutes forum shopping or interference with authority of a court. I enclose with this letter a copy of a note published in the internal organ of CACJ on this subject.

If you feel that my testimony can be helpful to your Committee at any point, I will be glad to come before your Committee and offer testimony in the areas in which it may be helpful. I firmly believe that the use of grand jury in both the federal and state arenas is improper, frequently abused and unjustified under the present conditions except in narrowly drawn circumstances. Furthermore, even where the use of grand jury is permitted, I believe that the use of preliminary hearings may be helpful in alleviating some of its disadvantages. Finally, a bill which would sanction the use of such procedures could couple its language with an extension of time under the Speedy Trial Act. As you know, the Chief Justice and many judges and trial attorneys are unhappy with the limitations under that Act and it would seem to me that wherever defense requests a preliminary hearing following an indictment, the time elapsing until the hearing can be had could be exempt from the provisions of the Speedy Trial Act, thereby killing two birds with one stone and making the whole approach much more palatable to those otherwise inclined to vote against it.

Please feel free to contact me if I can be of service.

Very truly yours,

EPHRAIM MARGOLIN.

Enclosure.

[From California Attorneys for Criminal Justice Forum, Vol. 3, No. 2, March-April supplement]

POST-INDICTMENT PRELIMINARY HEARINGS IN CALIFORNIA

(By Ephraim Margolin* and Nick Argulimbaum**)

At a first glance, *Johnson v. Superior Court*¹ is hardly a "watershed opinion." Nonetheless, watershed opinion it is. Within months of its publication, undreds of cases flooded this California "watershed." Every procedural device known to criminal lawyers was used in the process. At the time of this writing, most answers to the questions raised in *Johnson v. Superior Court*, can only be guessed at; however, we are at least approaching a point at which relatively precise questions can be formulated concerning the logical reaches of that decision and its future application.

In this paper we propose both to subject Johnson to traditional academic analysis and to undertake the risky exploration of new channels into which *Johnson v. Superior Court* is rapidly expanding. We invite you to share with us in the excitement of judicial history in the making, even while we endeavor to influence the course of events described in this paper.

1. JOHNSON IN A NUTSHELL

Johnson v. Superior Court was decided by the Supreme Court of California in September, 1975. It represents the response of one of the most prestigious judicial fora in the United States to a comprehensive attack on the grand jury

*A.B., Hebrew University, Jerusalem; LL.B., Yale Law School; Past President, California Attorneys for Criminal Justice; sometime Adjunct Professor, Hastings College of Law; member of California Bar.

**A.B., Harvard College; J.D., UCLA Law School; member, California Bar.
15 C. 3d 248, 124 Cal. Rptr. 32 (1975).

AFFIDAVITS OF AUSA ENGLE IN RESPONSE TO MOTION TO QUASH
AND CONCERNING MEDIA EXPOSITION

TRE:lna
75-1588
61-1289

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE GRAND JURY :
SUBPOENA SERVED ON PEDRO ARCHULETA,
:

AFFIDAVIT

77 Cr. Disc.
(# 11-128)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

THOMAS E. ENGEL, being duly sworn, deposes and
says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York and am in charge of the grand jury investigation of terrorist bombings the responsibility for which has been claimed by a group known as Fuerzas Armadas de Liberacion Nacional Puertorriquena, translated as Armed Forces of Puerto Rican National Liberation and abbreviated by its better-known acronym, FALN. I make this affidavit upon information and belief on behalf of the United States of America in opposition to the motion filed by Pedro Archuleta to quash a grand jury subpoena served upon him.

2. Submitted with this Affidavit is the x Parte Affidavit of Thomas E. Engel and the grand jury testimony of Special Agent Louis J. Vizi of the Federal Bureau of Investigation taken January 31, 1977. The testimony is provided to the Court so that the instant motion may be decided with a more specific knowledge of the nature of the grand jury inquiry and the undoubted relevance of the testimony of Mr. Archuleta. The exhibits referred to in the Vizi testimony will be made available to the Court upon request.

3. Another affidavit sworn to by the deponent herein and the Vizi testimony are submitted herewith to the Court ex parte and for in camera inspection only and may not be revealed to Movant Archuleta, his counsel, or to any other person without violating the secrecy of the grand jury proceedings. F.R. Cr. P., Rule 6(e). The ex parte submission of this material is proper. In the Matter of the Grand Jury Investigation (General Motors Corporation), 32 F.R.D. 179, 180-81 (S.D.N.Y. 1963) (Edelstein, Ch. J.) In the Matter of the Grand Jury Subpoena Served Upon David Doe, Dkt. No. 77-1047, Slip op. 2043, 2049 (2d Cir. March 17, 1977); In re September 1975 Grand Jury Term, 532 F.2d 734, 737 (10th Cir. 1976).

4. The grand jury is investigating, among other things, the terrorist activities of the FALN, and especially the bombings for which that group and other previous Puerto Rican terrorist groups have claimed responsibility. Since late 1974 the following bombings, have taken place in New York City.

October 26, 1974 - Marine Midland Bank 140 Broadway, Chemical Bank at 1251 Avenue of the Americas, Banco de Ponce at 10 Rockefeller Plaza, Lever House at 390 Park Avenue and the Union Carbide building at 270 Park Avenue were all dynamited between 2:30 and 3:30 in the morning causing extensive property damage.

December 11, 1974 - New York City Police Officer Angel Foygi responded to a vacant building at 336 East 116th Street pursuant to an emergency 911 call and was seriously maimed, permanently losing of his eyes, by an explosion triggered upon his entry into the vacant building.

January 24, 1975 - Fraunces Tavern at Broadway and Pearl Streets was dynamited during the lunch hour killing four persons and seriously injuring 53 others.

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April 2, 1975 - Bankers Trust Company at 280 Park Avenue, Metropolitan Life Insurance Company at 25th Street and Park Avenue, and New York Life Insurance Company, 67 Madison Avenue were dynamited at approximately midnight causing extensive property damage.

October 25, 1975 - National Westminster Bank, Ltd. at 100 Wall Street, Chase Manhattan Bank at 23 East 57th Street, First National City Banks at 111 Wall Street and at 40 West 57th Street and the United States Mission to the United Nations at 799 First Avenue were all dynamited at approximately 2:00 in the morning causing extensive property damage.

June 25, 1976 - Pan Am Building at 200 Park Avenue, New York, New York 40th Precinct Police Station 257 Alexander Avenue, Bronx, New York, First National City Bank, 349 East 149th Street, Bronx, New York, and Chase Manhattan Bank, 137th Street at Third Avenue were all targets of simultaneous dynamite bombings.

February 18, 1977 - Gulf & Western Building at Columbus Circle, Manhattan, and the Chrysler Building at 405 Lexington Avenue, were dynamited simultaneously causing extensive property damage. The communique issued by the FALN called for the end of what was characterized as "the illegal use of the grand jury."

March 20, 1977 - The F.B.I. headquarters at 201 East 69th Street, Manhattan, and the American Bank Note Company, 1241 Lafayette Avenue, Bronx, New York, were dynamited simultaneously, injuring two bystanders, and causing extensive property damage. The February 18, 1977 demand with respect to the grand jury was repeated.

April 9, 1977 - The FALN claimed responsibility for eight incendiary devices set off in Macy's, Gimbel's, and Bloomingdale's, causing extensive damage to merchandise and property. The communique issued with respect to this bombing, with apparent reference to these proceedings, stated:

"Since last year the Yanki government has been using grand jury process to stop the growth of the Puerto Rican Independence movement. These efforts by the government will prove futile because historically it is time for our (sic) government to progress no matter what the consequences are to anybody.

5. Bombs, the responsibility for which has been claimed by, or attributed to, the FALN, have also gone off in Chicago, Illinois. Among these have been:

June 14, 1975 - The Mid-Continental Plaza, 53 East Monroe Street, Chicago, Illinois, and the United of America Bank, 1 East Wacker Drive, Chicago, Illinois, were dynamited simultaneously with property damage to both buildings.

October 27, 1975 - The Continental National Bank, 231 South LaSalle Street; One IBM Plaza, 333 North State Street; and the Sears Tower, 231 South Wacker Drive, all in Chicago, Illinois, were bombed simultaneously causing extensive property damage. A fourth bomb, of five sticks of dynamite discovered in a bunch of 14 long-stemmed roses underneath a bench located in front of the Standard Oil of Indiana building, 200 East Randolph Street, Chicago, Illinois, did not detonate.

June 7, 1976 - Simultaneous dynamite bombings occurred at the Chicago Police Headquarters, 1121 South State Street; Bank Leumi, 100 North LaSalle Street; John Hancock Building, 875 North Michigan Avenue; and in a trash can at the intersection of Dearborn Street and Monroe Street. The latter bomb injured four

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persons seriously, and the others caused property damage.

September 10, 1977 - Substantial property damage was caused by the simultaneous bombings of the Puerto Rican Labor Office in the Mirpex Building, 734 North LaSalle Street, and the Holiday Inn at 644 Lakeshore Drive, Chicago, Illinois.

February 18, 1977 - On the same date as the bombings of the Gulf Western and Chrysler buildings in New York City, simultaneous bombings occurred at the United States Gypsum Building, 101 South Wacker Drive and at the Merchandise Mart. The latter bomb burst a watermain and caused an estimated 2.5 million dollar damage.

6. After discovery of a "bomb factory" in Chicago, Illinois on November 3, 1976 a man named Carlos Torres was charged with unlawful possession of explosive devices and unlawful flight to avoid prosecution by state and federal authorities but has not been found. Oscar Lopez, an associate of Torres, has also been sought.

7. Investigation by the FBI has since established that Carlos Torres was a member of the National Commission on Hispanic Affairs of the Protestant Episcopal Church and that Lopez was a former member of the Commission.

8. Law enforcement personnel immediately made efforts to locate Torres after discovery of the "bomb factory," and arrest warrants were subsequently issued for Torres charging him with unlawful possession of an explosive device and unlawful flight to avoid prosecution. As part of their search for Torres, agents of the New York Office of the FBI sought on November 18, 1976, to interview Maria Cueto and her secretary, Rebeca Merilla, with respect to their knowledge of Torres. Both Cueto and Merilla stated that Carlos Alberto Torres was a member of the Commission, and Miss Cueto identified a photograph of Torres and reported that she had last seen in New York on October 10,

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1976, just one week before the discovery of the "bomb factory" in Chicago.

9. On January 4, 1977, grand jury subpoenas issued to Maria Cueto and to her secretary at the Commission, Raisa Nemikin. Cueto and Nemikin brought on motions to quash on First Amendment grounds. These motions were denied by opinion of the Honorable Lawrence W. Pierce, United States District Judge, dated February 4, 1977. The opinion is attached to and made part of the Affidavit of Thomas E. Engel sworn to April 14, 1977 (the "Engel Open Affidavit"). The First Amendment objections were renewed before the Honorable Marvin E. Frankel, United States District Judge and were coupled with objections of asserted electronic surveillance in contempt hearings after Nemikin and subsequently Cueto were granted immunity pursuant to Title 18, United States Code, Sections 6002 and 6003. Nemikin and Cueto were held in contempt of this Court by orders of Judge Frankel dated February 26, 1977 and March 5, 1977, respectively. The orders of contempt were affirmed by the United States Court of Appeals for the Second Circuit on March 29, 1977. .
copy of the Government's Brief on Appeal of In the Matter of the Grand Jury subpoenas Served on Maria T. Cueto and Raisa Nemikin is attached to and made part of the Memorandum of Law accompanying this affidavit and the Engel Ex Parte ~~Open~~ Affidavit.

10. As the Affidavit of Pedro Archuleta concedes (Affidavit at 16), he was a member of the Commission in 1972 and 1973 and apparently received funds from the Commission at the same time for a medical clinic and community service operation where he is apparently employed.

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11. Archuleta is uniquely capable of providing information to the grand jury as Torres and Lopez are not within the command of a warrant or subpoena, respectively. Cusco and Henikin have refused to testify about the startling coincidence of persons who, on the one hand, have been associated with the Commission and, who, on the other hand, have been closely linked to terrorist bombings of the PALM. Although Archuleta has invoked his privilege against self-incrimination before a grand jury in Chicago, the Government is prepared to consider granting him immunity.

WHEREFORE, and for the reasons set forth in the accompanying grand jury testimony of Special Agent Luis J. Vizi and for the reasons in the accompanying affidavit of Thomas E. Engel and the accompanying Memorandum of Law, the Government respectfully requests that the motions to quash the grand jury subpoena and for a stay be in all respects denied.

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THOMAS E. ENGEL
Assistant United States Attorney

Sworn to before me this
24th day of April, 1977.

Notary Public

10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the
Subpoena Served upon
PEDRO ARBUJATA.

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

THOMAS E. ENGEL, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the Office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York and am in charge of the grand jury investigation into terrorist bombings that have taken place since late 1974, the credit for which has been claimed by a group calling itself the FALN. I make this affidavit in opposition to the motion to quash the grand jury subpoena served upon Pedro Arbujata and in response to certain matters raised in papers denominated "Offer of Proof in Support of Motions to Quash" (the "Offer of Proof").

2. To the extent that the article by Mary Breasted in the April 17, 1977 edition of the New York Times regarding the FALN stated that some information therein came from federal sources somewhere in the United States, the Government is not in a position, as was stated in court proceedings on April 22, 1977, to deny (or to confirm) the truth of that assertion.

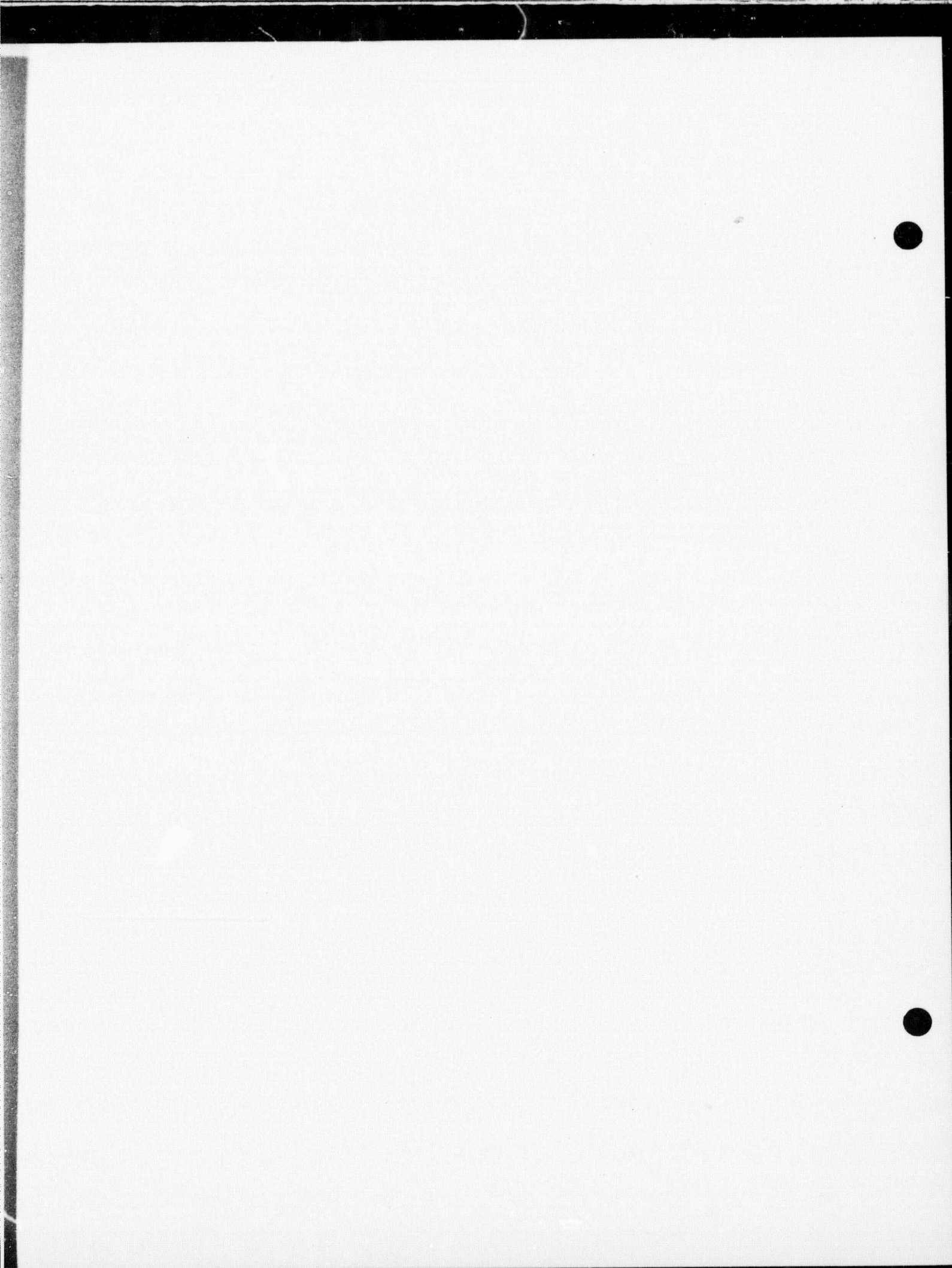
EXHIBIT 16

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representations made by the Government with respect to Mr. Archuleta's status as a witness before the grand jury in Chicago (Margolis Affidavit 15; Exhibit A to Margolis Affidavit at 19, final 4), and (2) the matters that are currently sub judice before the Honorable James B. Parsons, Chief Judge for the United States District Court for the Northern District of Illinois (Margolis Affidavit 15).

THOMAS E. ENGEL
Assistant United States Attorney

Sworn to before me this
day of May, 1977





TRANSCRIPT OF JUDGE OWEN'S ORAL OPINION ON CONTEMPT
JUNE 30, 1977

1 gwp

2 premature, then I think that it is premature to decide
3 now whether this man should be held in contempt for any
4 future questions that lay only in the mind of Mr. Engel.

5 THE COURT: Anything further?

6 MR. STERN: I just wish to indicate to the
7 Court that should it decide these issues against us,
8 that I would like an opportunity to argue towards the
9 exercise of your Honor's discretion to your sentence for
10 contempt in this case, and I just want to apprise you that
11 I would like to do that, but that would come should your
12 Honor decide against us. I just want to make you aware
13 of that.

14 THE COURT: Mr. Engel, is there anything you
15 want to say?

16 MR. ENGEL: No, your Honor.

17 THE COURT: I am going to take a recess for
18 five minutes.

19 (Recess.)

20 THE COURT: Gentlemen, I find Mr. Archuleta to
21 be in contempt.

22 (Hissing.)

23 THE COURT: When that is settled down, and if
24 we hear it again, I am going to have the courtroom cleared.
25 One good hiss and that's it.

1
2 Now, I see here a pattern of continuing
3 obstruction by every conceivable device available to
4 skillful and resourceful counsel.

5 For three months the government has been
6 denied the right to the legitimate testimony of one of
7 its citizens. Even today we get down to an area where
8 counsel has a right to demand it, but it was required
9 that we bring the grand jury reporter here to testify to
10 the accuracy of her minutes, and then it was required
11 that she go and actually check those minutes. This, it
12 seems to me, is all part of a thing to fight every last
13 bridge, every last argument right down to the wire.

14 I find that the affidavits of the Assistant
15 United States Attorney in this case and the FBI agents
16 as to their checks for illegal wiretaps has been thorough
17 and fully meets the tests of United States v. Yanagita.
18 The questions are very specific questions and the responses
19 of the prosecutorial officers are thoroughly sufficient.

20 I do not find any violation of a man's right
21 to be interrogated because he is one of a group whom the
22 interrogators legitimately feel may have some information,
23 and it seems to me they have a perfect right to go through
24 the members of that group on the expectation that with one of
25 them they will come upon the person they believe exists.

1
2 I find that Mr. Archuleta does not have standing
3 to raise the question of the composition of the grand
4 jury, that the Chestnut case do not apply. That was a
5 criminal contempt case. This is a civil contempt case
6 and, in my opinion, inapplicable.

7 I have already ruled that I do not find the
8 fact that there were arguably or, let us assume, for
9 purposes of argument that there were leaks from a prior
10 grand jury proceeding, that just because there were leaks,
11 that a future witness may claim that he may not testify
12 because in the past there have been leaks.

13 Given all the foregoing, I will now hear you,
14 Mr. Stern, on why Mr. Archuleta should not be forthwith
15 committed.

16 MR. STERN: There are two issues involved in
17 that, your Honor. One is the question of whether he
18 should be incarcerated at all and the other is whether
19 your Honor would grant a stay pending his appeal from the
20 order.

21 On the issue of incarceration itself, whether
22 or not your Honor agrees or disagrees that he has just
23 cause to refuse to answer the questions, there is and has
24 been a pattern in this investigation of disregard for the
25 processes of the grand jury.

COPY RECEIVED
ROBERT B. FISKE JR.
JUL 13 1977
U.S. ATTORNEY
SO. DIST. OF N. Y.